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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Tanaz Toloubeydokhti; Fathollah Tolou Beydokhti; Behnaz Malekghaeini; Afrooz Kharazmi; Afshan Alamshah Zadeh; Najib Adi; Ismail Alghazali; Malik Almathil; Khalil Ali Nagi; Hezam Alarqaban; Abdurraouf Gseaa; Sudi Wardere; Khadija Aden; Ali Altuhaif; Aziz Altuhaif; Soheil Vazehrad; Atefehossadat Motavaliabyazani; Bamshad Azizi; Roghayeh Azizikoutenaei; Hojjatollah

Civil Case No. 3:18-cv-01587

CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND FOR WRIT OF MANDAMUS

Azizikoutenaei; Clyde Jean Tedrick II; Mitra Farnoodian-Tedrick; Farajollah Farnoudian; Farangis Emami; Maral Charkhtab Tabrizi; Zahra Rouzbehani; Bahram Charkhtab Tabrizi; Maryam Mozafari; Mohammad Mehdi Mozaffary; Behnam Babalou; Hoda Mehrabi Mohammad Abadi; Mahdi Afshar Arjmand; Ehsan Heidaryan; Najmeh Maharlouei; Nastaran Hajiheydari; Mohamad Hamami,

Plaintiffs,

-against-

KIRSTJEN NIELSEN, in her official capacity as Secretary of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; MICHAEL R. POMPEO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF STATE; KEVIN K. MCALEENAN, in his official capacity as Commissioner of U.S. Customs and Border Protection; U.S. CUSTOMS AND BORDER PROTECTION; L. FRANCIS CISSNA, in his official capacity as Director of U.S. Citizenship and Immigration Services; U.S. CITIZENSHIP AND IMMIGRATION SERVICES,

Defendants.

INTRODUCTION

1. Presidential Proclamation 9645 issued on September 24, 2017 ("the Proclamation") prohibits the entry of all immigrants and certain categories of non-immigrants for nationals of Iran, Libya, Somalia, Syria, and Yemen.[1] The Proclamation provides for case-by-case waivers from the

[1] Under the terms of the Proclamation, all Syrian nationals are banned; all Libyan and Yemeni nationals seeking immigrant or non-immigrant B1/B2 visas are banned; all Iranian nationals except non-immigrants seeking F, M, or J visas are banned; and all Somali nationals seeking immigrant visas are banned.

ban for individuals who can "demonstrate" that denial of entry "would cause undue hardship, . . . would not pose a threat to national security, . . . and would be in the national interest." Ex. A, Presidential Proclamation No. 9645, 82 Fed. Reg. 45161 (Sept. 27, 2017), § 3(c). The Proclamation provides several examples of circumstances in which waivers may be appropriate, and further requires the Secretary of State and the Secretary of Homeland Security to adopt guidance establishing when waivers may be appropriate for foreign nationals who would otherwise be banned.

2. To date, however, no such guidance has been issued or publicly promulgated. The agencies do not appear to have established—and certainly have not provided any meaningful information to the public—about waiver application procedures, how waiver eligibility determinations are made, or whether any recourse exists for persons who are not considered for a waiver in the first instance.

3. Immediately after the Proclamation first went fully into effect in December 2017, thousands of individuals, including many plaintiffs in this action, reported receiving blanket, boilerplate denials of both visas and waivers, most before ever having had an opportunity to apply or to "demonstrate" that they meet the eligibility criteria described in the Proclamation. *Id.* Individuals denied include those who had previously been informed by American consular officials that their visas had been approved. Others were informed that their eligibility for a waiver is being considered, but have been waiting for many months without a decision in their cases. Both public reports and the latest government statistics illustrate that the number of waiver grants has been "a minuscule percentage" of those eligible for visas. *Trump v. Hawaii,* 585 U.S. ___(2018) (Breyer, J., dissenting). By all indications, the waiver process has been "a fraud." Ex. B, Decl. of

Christopher Richardson, Esq., *Alharbi v. Miller*, No. 1:18-cv-02435 (E.D.N.Y. filed April 25, 2018), ECF No. 24-2.

4. Plaintiffs and putative class members are U.S. citizens, lawful permanent residents, and Iranian, Libyan, Somali, Syrian, and Yemeni foreign nationals whose visa applications have been denied or stalled by the government's failure to provide fair and meaningful access to case-by-case waivers. Many have approved visa petitions for their family members; others have family members who have applied for immigrant or non-immigrant visas and been summarily denied or indefinitely stalled; and others have applied for business-related or extraordinary ability visas to the United States. All seek entry to the United States to be reunited with their families or because of significant business or professional relationships in the United States.

5. Based upon all available data and information, Defendants have adopted a policy or practice of not instituting an orderly waiver process through which individuals may "demonstrate," as stated in the Proclamation, their eligibility for a case-by-case waiver. Ex. A, § 3(c).

6. Defendants have further adopted a policy or practice of not providing information about the waiver process and have thereby hindered Plaintiffs' and their family members' ability to make a showing that they meet the relevant criteria.

7. Defendants have also adopted a policy or practice of denying or stalling virtually all visa issuance and waiver grants under the Proclamation, and have not given consular officials the discretion to grant any waivers.

8. As set forth below, the government's failure to provide a meaningful, orderly, and accessible process through which individuals covered by the ban can demonstrate their eligibility for a waiver violates the Administrative Procedure Act ("APA"), the Immigration and Nationality

Act ("INA"), and Plaintiffs' right to due process under the Fifth Amendment to the U.S. Constitution.

9. Accordingly, Plaintiffs request that this Court order Defendants to immediately cease their unlawful policies and/or practices of refusing to receive or consider requests for waivers under the Proclamation for visa applicants; retract visa denials issued before an orderly process is put in place; provide clear guidance that defines key words and sets well-defined standards for consular officers and applicants to use; provide an orderly process by which applicants may demonstrate their eligibility for a waiver; and give full consideration for case-by-case waivers to all visa applicants as set forth in the Proclamation.

CLASS DEFINITION

10. Plaintiffs bring this case as a class action under Federal Rules of Civil Procedure 23(a) and (b), on behalf of the following two subclasses: (i) the "Family Member Class" and (ii) the "Visa Applicant Class."

11. The **Family Member Class** is comprised of United States citizens and lawful permanent residents with approved family-based visa petitions or whose family members have applied for visa categories covered by the ban, and whose family members have been or will be refused pursuant to the Proclamation without an opportunity to apply for and be meaningfully considered for a waiver or are awaiting adjudication of a waiver.

12. The **Visa Applicant Class** is comprised of Iranian, Libyan, Somali, Syrian, and Yemeni nationals who have applied for immigrant or nonimmigrant visas that have been or will be refused pursuant to the Proclamation without the opportunity to apply for and be meaningfully considered for a waiver or who are awaiting adjudication of a waiver.

JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

13. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361 (Mandamus and Venue Act of 1962), 5 U.S.C. § 702 (APA), and 28 U.S.C. § 220 (Declaratory Judgment Act). The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702. This Court may grant declaratory and injunctive relief pursuant to 5 U.S.C. § 702, 28 U.S.C. § 1651, and 28 U.S.C. § 2201–2202.

14. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(e) because Defendants are officers or employees of the United States acting in their official capacities and agencies of the United States; many Plaintiffs reside in this judicial district; and no real property is involved in this action. Plaintiffs have exhausted all administrative remedies.

15. Intradistrict assignment is proper in the San Francisco Division because a substantial part of the events or omissions that give rise to the claim occurred in San Francisco and Napa Counties. Civil L. R. 3-2(c), (d).

PARTIES

I. Plaintiffs

16. Plaintiff Afrooz Kharazmi is a U.S. citizen residing in Loveland, Ohio. She seeks to be reunited with her sister, for whom she has an approved family-based visa petition.

17. Plaintiff Afshan Alamshah Zadeh is an Iranian national residing in Iran. Ms. Alamshah Zadeh has a pending immigrant visa based on Ms. Kharazmi's approved family-based immigrant visa petition.

18. Plaintiff Tanaz Toloubeydokhti is a U.S. citizen residing in San Diego, California. She seeks to be reunited with her parents, for whom she has an approved family-based immigrant visa petition.

19. Plaintiffs Fathollah Tolou Beydokhti and Behnaz Malekghaeini are Iranian nationals residing in Iran. Mr. Tolou Beydokhti and Ms. Malekghaeini have pending immigrant visas based on Ms. Toloubeydokhti's approved family-based immigrant visa petitions.

20. Plaintiff Dr. Najib Adi is a U.S. citizen residing in Bristow, Virginia. He seeks to be reunited with his Syrian mother, for whom he has an approved family-based visa petition. He has been awaiting adjudication of her eligibility for a waiver for more than seven months.

21. Plaintiff Ismail Alghazali is a U.S. citizen currently residing in Djibouti. He had an approved family-based petition for his Yemeni wife, but her visa application was denied at the interview in Djibouti in December 2017 and she was not considered for a waiver. He is in Djibouti with his wife and five-month-old son, whom he wishes to bring home with him to the United States.

22. Plaintiff Malik Almathil is a U.S. citizen residing in New York City. He had an approved family-based petition for his Yemeni wife, but her visa application was denied at the interview in Djibouti in December 2017 and she was not considered for a waiver. He seeks to be reunited with his wife.

23. Plaintiff Khalil Ali Nagi is a U.S. citizen residing in Schenectady, New York with his four-year-old U.S. citizen daughter. He has an approved family-based petition for his Yemeni wife, who had her interview in Djibouti in October 2017. She was told at her interview that her visa would be approved, but in March 2018, her visa was denied and she was informed that she would not be considered for a waiver. He seeks to be reunited with his wife.

24. Plaintiff Hezam Alarqaban is a lawful permanent resident of the United States residing in Oakland, California. He seeks to be reunited with his Yemeni wife and eleven children, for whom

he has approved family-based visa petitions and who had been issued visas that were later revoked. He is awaiting adjudication of his family's eligibility for a waiver.

25. Plaintiff Abdurraouf Gseaa is a U.S. citizen residing in Houston, Texas. He seeks to be reunited with his pregnant Libyan wife, for whom he has an approved family-based visa petition. He is awaiting adjudication of her eligibility for a waiver.

26. Plaintiff Sudi Wardere is a U.S. citizen residing in Kirkland, Washington. She seeks to be reunited with her Somali husband, for whom she has an approved family-based visa petition, so that they can live together and so that he can meet their son. She is awaiting adjudication of his eligibility for a waiver.

27. Plaintiff Khadija Aden is a lawful permanent resident of the United States residing in Seattle, Washington. She seeks to be reunited with her son, who is currently living in a refugee camp in Kenya and for whom she has an approved family-based petition.

28. Plaintiff Ali Altuhaif is a U.S. citizen residing in Dearborn, Michigan. His Yemeni son won an immigrant visa through the diversity visa lottery but was told at his interview in Djibouti in July 2018 that his visa type is categorically ineligible for a waiver. He seeks to be reunited with his son.

29. Plaintiff Aziz Altuhaif is a Yemeni national residing in Djibouti. He won the diversity visa lottery but was told at his interview in Djibouti in July 2018 that his visa type is categorically ineligible for a waiver. He seeks to be reunited with his family in the United States.

30. Plaintiff Soheil Vazehrad is a U.S. citizen residing in Napa, California. He seeks to be reunited with his fiancée, for whom he has an approved K1 fiancé visa petition.

31. Plaintiff Atefehossadat Motavaliabyazani is an Iranian national residing in Iran. Ms. Motavaliabyazani has a pending nonimmigrant visa based on Mr. Vazehrad's approved K1 fiancé visa petition.

32. Plaintiff Bamshad Azizi is a lawful permanent resident of the United States residing in San Jose, California. He has assisted his parents in applying for B1/B2 visitor visas so that they may come visit him in the United States.

33. Plaintiffs Roghayeh Azizikoutenaei and Hojjatollah Azizikoutenaei are Iranian nationals residing in Iran. Mr. and Mrs. Azizikoutenaei have applied for B1/B2 visitor visas to visit their son Mr. Azizi in the United States.

34. Plaintiff Clyde Jean Tedrick II is a U.S. citizen residing in Rockville, Maryland. He is married to an Iranian national and has assisted his parents-in-law in applying for B1/B2 visitor visas so that they may come visit his family in the United States.

35. Plaintiff Mitra Farnoodian-Tedrick is a lawful permanent resident of the United States residing in Rockville, Maryland. She is married to Mr. Tedrick. She has assisted her parents in applying for B1/B2 visitor visas so that they may come visit her family in the United States.

36. Plaintiffs Farajollah Farnoudian and Farangis Emami are Iranian nationals residing in Iran. They have applied for B1/B2 visitor visas so that they may visit their daughter Ms. Farnoodian-Tedrick, their son-in-law Mr. Tedrick, and their family in the United States.

37. Plaintiff Maral Charkhtab Tabrizi is a lawful permanent resident of the United States residing in Tempe, Arizona. She is married to a U.S. citizen and has recently given birth to her first child. She has assisted her Iranian parents in applying for B1/B2 visitor visas so that they may come visit her and meet their grandchild in the United States.

38. Plaintiffs Zahra Rouzbehani and Bahram Charkhtab Tabrizi are Iranian nationals residing in Iran. Ms. Rouzbehani and Mr. Charkhtab Tabrizi have applied for B1/B2 visitor visas so that they may come visit their daughter Ms. Tabrizi and meet their grandchild in the United States.

39. Plaintiff Maryam Mozafari is a lawful permanent resident of the United States residing in San Francisco, California. She has assisted her Iranian father in applying for a B1/B2 visitor visa so that he may come visit her in the United States.

40. Plaintiff Mohammad Mehdi Mozaffary is an Iranian national residing in Iran. Mr. Mozaffary has applied for a B1/B2 visa so that he may visit his daughter Ms. Mozafari in the United States.

41. Plaintiff Mr. Behnam Babalou is an Iranian national residing in Iran who invested $500,000.00 in CMB Infrastructure Investment Group XIV, L.P. ("CMB"), located in San Bernardino, California. Mr. Behnam Babalou has an approved immigrant visa petition based on his investments and significant business ties in CMB.

42. Plaintiff Hoda Mehrabi Mohammad Abadi is an Iranian national residing in Iran who invested $500,000.00 in Kimpton Hotels & Restaurants ("Kimpton Hotels") in Milwaukee, Wisconsin. She has an approved immigrant visa petition based on her $500,000.00 investment in Kimpton Hotels.

43. Plaintiff Dr. Mahdi Afshar Arjmand is an Iranian national, currently residing in Iran, who has an approved immigrant visa petition based on his extensive record of achievements as a noncitizen with extraordinary ability.

44. Plaintiff Dr. Ehsan Heidaryan is an Iranian national, currently residing in Brazil, who has an approved immigrant visa petition based on his extensive record of achievements as a noncitizen with extraordinary ability.

45. Plaintiff Najmeh Maharlouei is an Iranian national currently residing in Shiraz, Iran, who has an approved immigrant visa petition based on her extensive record of achievements and the fact that her work is in the national interest of the United States.

46. Plaintiff Nastaran Hajiheydari is an Iranian national, currently residing in Iran, who has an approved immigrant visa petition based on her extensive record of achievements and the fact that her work is in the national interest of the United States.

47. Plaintiff Mohamad Hamami is a Syrian national and a world-class violinist, currently residing in Dubai, who has an approved immigrant visa petition based on his extensive record of achievements as a noncitizen with extraordinary ability.

II. Defendants

48. Defendant Kirstjen Nielsen is the Secretary of Homeland Security and is sued in her official capacity. Secretary Nielsen is responsible for the Department of Homeland Security ("DHS")'s administration of the Immigration and Nationality Act ("INA") and its implementation and enforcement of the Proclamation.

49. Defendant DHS is an executive department of the United States government, headquartered in Washington, DC. DHS is assigned several responsibilities regarding implementation and enforcement of the Proclamation.

50. Defendant Michael R. Pompeo is the Secretary of State and is sued in his official capacity. Secretary Pompeo oversees the Department of State ("State Department")'s activities with respect to the INA and its implementation and enforcement of the Proclamation.

51. Defendant State Department is an executive department of the United States, headquartered in Washington, DC. The State Department has primary responsibility for issuing visas and for

implementing the Proclamation. The State Department is assigned several responsibilities regarding implementation and enforcement of the Proclamation.

52. Defendant Kevin K. McAleenan is the Acting Commissioner of U.S. Customs and Border Protection ("CBP") and is sued in his official capacity. Acting Commissioner McAleenan is responsible for CBP's implementation of the INA and its implementation and enforcement of the Proclamation.

53. Defendant CBP is an administrative agency within DHS, headquartered in Washington, DC. CBP is assigned several responsibilities regarding implementation and enforcement of the Proclamation.

54. Defendant L. Francis Cissna is the Director of U.S. Citizenship and Immigration Services ("USICIS") and is sued in his official capacity. Acting Director Cissna is responsible for USCIS's implementation of the INA and its enforcement of the Proclamation.

55. Defendant USCIS is an administrative agency within DHS, headquartered in Washington, DC. USCIS oversees lawful immigration to the United States, including the approval of visa petitions. USCIS is assigned several responsibilities regarding implementation and enforcement of the Proclamation.

STATEMENT OF FACTS

I. The Proclamation

56. On September 24, 2017, President Trump issued Presidential Proclamation 9645 ("the Proclamation"), entitled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats." Ex. A. The Proclamation is the third version of a travel ban enacted by President Trump in fulfilment of promises he made on the campaign trail to institute a "total and complete shutdown" on Muslims

entering the United States. Jenna Johnson, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering the United States*,' Wash. Post (Dec. 7, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states/?utm_term=.6cf6b32baba2. *See also* Todd Green, *By any other name: Why the 'travel ban' really is a Muslim ban*, Religion News Service (July 3, 2018), https://religionnews.com/2018/07/03/by-any-other-name-why-the-travel-ban-really-is-a-muslim-ban/.

57. The Proclamation puts in place an indefinite travel ban on most nationals of five[2] predominantly Muslim countries, including all immigrants and various categories of non-immigrants from each of the enumerated countries.[3] Alongside these entry restrictions, the Proclamation provides for a waiver that may be granted on a case-by-case basis to individuals who meet three specific criteria.[4] Ex. A, § 3(c); *infra* Section II.

58. The Proclamation was challenged in court, and before its effective date, two district courts issued nationwide injunctions prohibiting implementation of the ban against individuals with "bona fide relationships" to persons or entities in the United States. *See Int'l Refugee Assistance Project v. Trump,* 265 F.Supp.3d 570 (D. Md. 2017); *Hawaii v. Trump,* 265 F.Supp.3d 1140 (D.

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[2] The Proclamation originally included six Muslim-majority countries: Chad, Iran, Libya, Somalia, Syria, and Yemen. Ex. A, § 2(a). In April 2018, the administration removed Chad from the list of targeted countries. Press Release, Dep't of State, Presidential Proclamation Lifts Travel Restrictions for Chad (April 10, 2018), https://www.state.gov/r/pa/prs/ps/2018/04/280364.htm. The Proclamation also prevents entry of certain Venezuelan government officials and their family members and of all North Korean nationals. *See* Ex. A, § 2(d), (f).

[3] Under the terms of the Proclamation, all Syrian nationals are banned; all Libyan and Yemeni nationals seeking immigrant or non-immigrant B1/B2 visas are banned; all Iranian nationals except non-immigrants seeking F, M, or J visas are banned; and all Somali nationals seeking immigrant visas are banned.

[4] The Second Executive Order created a waiver process, Exec. Order No. 13780, 82 Fed. Reg. 13209, § 3(c) (Mar. 6, 2017), which the Proclamation extended.

Haw. 2017). On December 4, 2017, the Supreme Court granted Defendants' application for a stay of the preliminary injunctions entered by the district courts, allowing full implementation of the travel ban to proceed. *See Trump v. Int'l Refugee Assistance Project,* 138 S. Ct. 542 (2017). The Supreme Court subsequently upheld the Proclamation on the merits. *Trump v. Hawaii*, 585 U.S. ___, 138 S. Ct. 2392 (2018).

59. Since December 4, 2017, the Proclamation has been in full effect, and the only means by which covered individuals from the banned countries may enter the United States is through grant of a case-by-case waiver.

II. Case-by-Case Waivers under the Proclamation

60. Section 3 of the Proclamation contains a subsection entitled "Waivers," which states:

> Notwithstanding the suspensions of and limitations on entry set forth in section 2 of this proclamation, a consular officer, or the Commissioner, United States Customs and Border Protection (CBP), or the Commissioner's designee, as appropriate, may, in their discretion, grant waivers on a case-by-case basis to permit the entry of foreign nationals for whom entry is otherwise suspended or limited if such foreign nationals demonstrate that waivers would be appropriate and consistent with subsections (i) through (iv) of this subsection [laying out waiver standards].

Ex. A, § 3(c).

61. The Proclamation explains that a waiver may be granted if, in a consular officer's or CBP's discretion, a foreign national has demonstrated that: (1) denial of entry "would cause the foreign national undue hardship"; (2) his or her "entry would not pose a threat to the national security or public safety of the United States"; and (3) his or her "entry would be in the national interest." *Id.* § 3(c)(i).

62. The Proclamation then specifies that while "case-by-case waivers may not be granted categorically," they "may be appropriate, subject to the limitations, conditions, and requirements

set forth" in subsection (c), "in individual circumstances …." *Id.* § 3(c)(iv). It proceeds to give a number of examples of circumstances under which issuance of a waiver may be appropriate, including:

> (A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date … of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;
>
> (B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date ... of this proclamation for work, study, or other lawful activity;
>
> (C) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;
>
> (D) the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;
>
> (E) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case ….

Id.

63. The Proclamation also instructs that, "[t]he Secretary of State and the Secretary of Homeland Security shall coordinate to adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants." *Id.* § 3(c). It further directs the Secretaries to:

> [A]ddress the standards, policies and procedures for:

> (A) determining whether the entry of a foreign national would not pose a threat to the national security or public safety of the United States;
>
> (B) determining whether the entry of a foreign national would be in the national interest;
>
> (C) addressing and managing the risks of making such a determination in light of the inadequacies in information sharing, identity management, and other potential dangers posed by the nationals of individual countries subject to the restrictions and limitations imposed by this proclamation;
>
> (D) assessing whether the United States has access, at the time of the waiver determination, to sufficient information about the foreign national to determine whether entry would satisfy the requirements of subsection (i) of this subsection; and
>
> (E) determining the special circumstances that would justify granting a waiver under subsection (iv)(E) of this subsection.

Id. § 3(c)(ii).

III. Agency Guidance and Implementation

64. The Proclamation itself only provides scant details about the case-by-case waiver process. Instead, it directs the Secretary of State and the Secretary of Homeland Security to develop specific guidance for consular officers and visa applicants on how the waiver provisions will be implemented. *Id*. § 3(c).

65. Despite this clear mandate, the agencies have failed to provide any meaningful guidance. *See Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) ("The Government … has offered no explanation for how these [discretionary waiver] provisions would function in practice: how would the 'national interest' be determined, who would make that determination, and when?").

66. After the Supreme Court's lifting of the stays on the Proclamation, the State Department did issue, through its website, some minimal instructions regarding its immediate implementation.

Ex. C, Dep't of State, *New Court Order on Presidential Proclamation* (Dec. 4, 2017). That posting stated that consular officers will review eligibility for a waiver at the time of an applicant's interview. *Id*.

67. Yet, as set forth below, Defendants have not provided any meaningful guidance about the waiver process, leaving applicants and their attorneys confused about the process and unable to submit documents that could "demonstrate" their eligibility for a waiver. Ex. D, Jay Gairson Decl.

68. All available evidence shows that Defendants are not providing any meaningful individualized consideration of waiver applicants' eligibility. Just days after the Proclamation went into effect, several organizations and attorneys, including undersigned counsel, began receiving reports from individuals covered by the ban of *pro forma,* mass denials of both visas and waivers by consular offices in Armenia, Turkey, Djibouti, Dubai, Abu Dhabi, and elsewhere. *See* Yeganeh Torbati & Mica Rosenberg, *Exclusive: Visa Waivers Rarely Granted under Trump's Latest U.S. Travel Ban: Data,* Reuters (Mar. 6, 2018), https://www.reuters.com/article/us-usa-immigration-travelban-exclusive/ exclusive-visa-waivers- rarely-granted-under-trumps-latest-u-s-travel-ban-data-idUSKCN1GI2DW; Ex. D, Jay Gairson Decl.; *infra* Section IV. Many of the individuals who were notified that they had been denied waivers, including Plaintiffs in this action, had never been informed about or provided an opportunity to apply for a waiver. *See infra* Section IV. Automatically denied individuals included those who had previously been informed that their visas had been approved. *See infra* Section IV.

A. The Guidance Provided by Federal Officials About the Waiver Process Has Been Non-Existent or Conflicting.

69. After the Proclamation went into effect in December 2017, visa applicants immediately began to contact embassies and consulates abroad to ask for guidance and clarification, but

received no response or standard automated responses that did not address their questions or provide meaningful information. *See infra* Section IV. Attorneys contacted the State Department for clarification but also received inadequate and inconsistent responses. *Id.*

70. More than seven months after the Proclamation went into effect and almost a year since its issuance, Defendants have yet to promulgate such guidance, and their practices continue to sow confusion and chaos. *See Trump v. Hawaii*, 585 U.S. ___, 138 S. Ct. 2392, 2431 (2018) (Breyer, J., dissenting) (stating that, although the Proclamation directs the Secretaries to develop guidance for consular officers, to the Court's "knowledge, no guidance has issued").

71. In addition to the failure to promulgate adequate guidance to consular officers, Defendants have not offered meaningful definitions of key terms that determine eligibility under the Proclamation's waiver provisions, including "undue hardship" and "significant contacts." Instead, the State Department has only provided the following general statement in response to a query by a U.S. Senator:

> First, to satisfy the undue hardship criterion, the applicant must demonstrate to the consular officer's satisfaction that an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans would defeat the purpose of travel. Second, the applicant's travel may be considered in the national interest if the applicant demonstrates to the consular officer's satisfaction that a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted.
>
> Finally, to establish that the applicant does not constitute a threat to national security or public safety, the consular officer considers the information-sharing and identity-management protocols and practices of the government of the applicant's country of nationality as they relate to the applicant. If the consular officer determines, after consultation with the Visa Office, that an applicant does not pose a threat to national security or public safety and the other two requirements have been met, a visa may be issued with the concurrence of a consular manager.

Ex. E, Letter from Mary K. Waters, U.S. Dep't of State, to Chris Van Hollen, U.S. Senator (Feb. 22, 2018) ("First Van Hollen Letter").

72. Although the State Department asserted in the same letter that "[t]he Department's worldwide guidance to consular officers regarding waivers is drawn directly from the Proclamation," *id.,* the above-quoted statement adds a requirement of showing "that a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted," which does not appear anywhere in the Proclamation.

73. Individuals who clearly meet the criteria outlined in the Proclamation and the statement provided to Senator Van Hollen are nonetheless routinely being denied waivers without due consideration, in some cases just days after the ban went into effect. *See, e.g., Trump v. Hawaii*, 138 S. Ct. at 2431 (Breyer, J., dissenting) (identifying "numerous applicants who could meet the waiver criteria," but who have nonetheless been summarily rejected, including scholars, relatives of U.S. citizens, and a Yemeni child with cerebral palsy,[5] and pointing to an amicus brief which "identified 1,000 individuals—including parents and children of U. S. citizens—who sought and were denied entry under the Proclamation, hundreds of whom seem to meet the waiver criteria.")

74. This lack of clarity has left applicants confused about applicable standards of eligibility for waivers—whether their hardships are undue, their contacts significant—and has left consular officers with the understanding that the goal is to deny waivers to the fullest extent possible. Ex. B, Christopher Richardson Decl.

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[5] After Justice Ruth Bader Ginsburg inquired about her case at oral argument in Trump v. Hawaii on April 25, 2018, a waiver was granted in her case and her visa was issued, allowing her to come to the United States with her U.S. citizen father.

75. Nor has the State Department provided an orderly process through which individuals who are covered by the ban may apply or seek to "demonstrate"—as the Proclamation specifically provides—their eligibility for a waiver. *See infra* Section IV. Instead, individuals, attorneys, and organizations seeking to assist impacted community members have had to resort to guesswork and have had to invent a process by which to obtain consideration of materials relevant to any meaningful waiver determination. *See* Ex. D, Jay Gairson Decl.

76. Further, even where the State Department has provided minimal guidance, that guidance does not appear to be followed or applied with any consistency. For example, the State Department website provides a definition of "close family member," stating that the definition for purposes of the Proclamation is the same as the definition of "immediate relative" contained in the INA.[6] Ex. F, Dep't of State, *Revisions to Presidential Proclamation 9645* (Apr. 10, 2018) (citing 8 U.S.C. § 1151(b)(2)(A)(i)). But according to an email received by counsel from the U.S. consulate in Vancouver, Canada, visa applicants who seek to be reunited with a parent in the United States are ineligible for consideration for a waiver if they are over the age of 21, a definition that is found nowhere in immigration law and that is the reverse of the definition of "immediate relative" in the cited provision. The email exchange reads in relevant part as follows:

> COUNSEL: [I]t appears as though my client, [REDACTED], has been denied the opportunity to request a waiver of the presidential proclamation.
> According to the presidential proclamation itself and guidance on the State Department's website, foreign nationals who seek to enter the US to be reunited with a close family member (e.g. spouse, child, or parent) are eligible for requesting a waiver.
> My client is the daughter of a United States citizen. Could you kindly explain why your office has denied my client the opportunity to request a waiver of the presidential proclamation?

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[6] 8 U.S.C. § 1151(b)(2)(A)(i) defines "immediate relatives" as the children, spouses, and parents of U.S. citizens, and only allows children *over* the age of 21 to petition for immigrant visas for their parents.

> CONSULATE: A consular officer may issue a visa based on a listed waiver category to nationals of countries identified in the Presidential Proclamation on a case-by-case basis.
> It has been determined that your client, [REDACTED], does not meet the definition of close family as she is over 21 years of age.
> This decision cannot be appealed.

Ex. G, Email sent by U.S. Consulate General in Vancouver, Canada, to Attorney Shabnam Lotfi (Jan. 9, 2018).

77. Applicants in certain visa categories, in particular the diversity visa lottery category, have been told that they are categorically not eligible to be considered for a waiver—an assertion that is both false and contrary to the terms of the Proclamation. *See infra* Section IV.C. In the absence of standards to guide consular officers in their decision-making, different posts appear to have adopted different practices. Ex. D, Jay Gairson Decl. The result has been an almost-uniform denial of case-by-case waivers.

78. Attorneys have also been told by consulates that they may not submit documents in support of waiver applications for their clients, and that "[t]here is no role or requirement for legal services to facilitate the waiver process." The email exchange reads in relevant part as follows:

> COUNSEL: Could you please kindly let us know whether you will allow our office to submit a waiver packet on behalf of the beneficiary to outline and present evidence that he meets the grounds for approval of a waiver in consideration of the three grounds outlined by Sections 3(c) of the Proclamation…
> CONSULATE: As we said, we have all the required documents at this time. We have already submitted a waiver request on behalf of the applicant, as the applicant was informed during the interview. There is no role or requirement for legal services to facilitate the waiver process, which the Embassy initiated as soon as the applicant was interviewed. Please note – and inform your client – that only U.S. government officials can author waiver requests.

Ex. H, Email correspondence between Attorney Parastoo Zahedi and the Consular Section of the U.S. Embassy in Abu Dhabi (July 18-19, 2018).

79. Existing guidance also does not explain how consular officers should consider the eligibility for a waiver of applicants who, like several Plaintiffs in this action, were interviewed prior to implementation of the Proclamation but were in administrative processing[7] at the time the ban went into effect, or for visa applicants whose applications were approved prior to implementation of the ban but who had not yet gotten their visas stamped in their passports. *See, e.g.,* Ex. K, Findings of Fact and Conclusions of Law, *Alharbi v. Miller*, No. 1:18-cv-02435 (E.D.N.Y. filed April 25, 2018), ECF No. 20.

80. The government has staunchly refused to provide meaningful information or to institute an orderly, predictable process by which individuals may apply for a case-by-case waiver. Applicants are thus at a loss for what to do—they do not know whether to contact the embassy or whether the embassy will contact them; whether they should wait until administrative processing is completed or request a waiver while their cases are still pending administrative processing.[8]

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[7] Administrative processing is a period after a visa interview during which applicants undergo additional screening outside of "normal" visa processing. Maggio & Kattar & The Pennsylvania State University Law School's Center for Immigrants' Rights, *Administrative Processing FAQ*, 1, Penn. State L. Sch., https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/Administrative-Processing-FAQ.pdf (last visited July 29, 2018). "Before issuing a visa, consular officers review different databases to determine if information exists that may impact individual eligibility for a visa. A 'hit' on a particular database occurs when there is a match between the visa applicant and a database. These hits may be based on criminal convictions, security risks, and prior visa overstays or denials (this list is non-exhaustive)." *Id.* A hit may also occur when an applicant's name is similar to the name of someone suspected of criminal activity. *Id.* at 4. "When an individual case has been tagged in a database, the Department of State, at the request of the consular post, may initiate administrative processing." *Id.* at 1. Cases filed by nationals of several countries are routinely placed in administrative processing. *Id.* at 3.

[8] In fact, the waiver process remains so opaque that, in addition to formal requests for information from U.S. senators, two civil rights organizations, including undersigned counsel, have filed a FOIA request seeking documents from the State Department that could provide some clarity and transparency about the travel ban waiver process. Muslim Advocates and

B. Denial Letters Issued by Consular Officers Provide Further Evidence of the Dearth of Meaningful Guidance.

81. Defendants provided the consulates and embassies abroad with a template letter to provide to applicants when they have been denied a visa pursuant to the Proclamation. The letter has two options for a consular officer to select: (1) "Taking into account the provisions of the Proclamation, a waiver will not be granted in your case"; or (2) "The consular officer is reviewing your eligibility for a waiver under the Proclamation." Ex. I, Embassy letter regarding eligibility for waiver under the Proclamation.

82. These form letters further confirm that not all individuals are being considered for case-by-case waivers, in direct conflict with agency statements that "[a] consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation . . . and, if so, whether the applicant qualifies for an exception or a waiver." Ex. F, Dep't of State, *Revisions to Presidential Proclamation 9645* (Apr. 10, 2018). As set forth previously, scores of denials were issued just days after the Proclamation went into effect, and numerous individuals who have received these form denials at the interview were told that their eligibility would not be considered and that they may not submit additional documents in support of such consideration. *See infra* Section IV.

C. Defendants Have Granted a "Minuscule Percentage" of Waiver Applications.

Center for Constitutional Rights, *Freedom of Information Act Request Regarding the Waiver Process Provided for in Presidential Proclamation 9645* (January 23, 2018), https://www.muslimadvocates.org/files/2018.01.23_FOIA_Proclamation-Waivers-Signed.pdf. The State Department has not yet complied with that request, which is currently being litigated in the U.S. District Court for the District of Columbia. *Muslim Advocates v. Dep't of State*, No. 1:18-cv-01546 (D.D.C. filed June 28, 2018).

83. To date, the overwhelming majority of waiver applicants have been denied or stalled by Defendants.

84. In a letter dated February 22, 2018, the State Department disclosed that, as of January 8, only two waivers were granted to applicants of the banned countries out of at least 6,555 applicants who were eligible to be considered for waivers—a rejection rate of more than 99%. Ex. E, First Van Hollen Letter.

85. The State Department subsequently asserted that as of March 6, 2018, 100 additional waivers had been cleared or granted, likely to an expanded pool of applicants—moving the rejection rate to at best 98% of visa applicants. Torbati & Rosenberg, *Exclusive: Visa Waivers Rarely Granted, supra* Section III.

86. A more recent letter shows that the situation has not improved. Ex. J, Letter from Mary K. Waters, U.S. Dep't of State, to Chris Van Hollen, U.S. Senator (June 22, 2018) ("Second Van Hollen Letter"). As of April 30, out of 27,129 applicants from banned countries who were ostensibly considered for waivers, only 579 had been "cleared" for waivers. That figure rose to 768 as of May 31, *id.* and according to the latest numbers from the State Department website is now at 996. U.S. Dep't of State, *June 26 Supreme Court Decision on Presidential Proclamation 9645* https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/june_26_supreme_court_decision_on_presidential_proclamation9645.html (last visited July 29, 2018). On the most favorable reading of those numbers, the rejection rate remains greater than 98%. *See Trump v. Hawaii*, 585 U.S. ___, 138 S. Ct. 2392, 2431 (2018) (Breyer, J., dissenting) ("That number, … however, when compared with the number of pre-Proclamation visitors, accounts for a miniscule percentage of those likely eligible for visas, in such categories as persons requiring medical treatment, academic visitors, students, family

members, and others belonging to groups that, when considered as a group (rather than case by case), would not seem to pose security threats.").

87. Critically, however, not all individuals "cleared" for waivers have been *granted* a waiver or issued a visa. Based on all available evidence, being "cleared" for a waiver simply means that the consulate has forwarded the case for *consideration* for a waiver grant by the State Department in Washington, DC. Ex. D, Jay Gairson Decl. Individuals "cleared" for waivers may continue to be stalled and may not ultimately be granted a visa, rendering the government's 996 figure essentially meaningless. The percentage of persons who have *actually* been granted a waiver and issued a visa is, based upon all available evidence, considerably smaller than the bare 2 percent of individuals who have been "cleared" for consideration for a waiver grant.

D. Former Consular Officials Have Confirmed the Absence of a Meaningful Waiver Process.

88. Former consular officers have confirmed the absence of a meaningful waiver consideration process.

89. In a sworn affidavit submitted in related litigation in the Eastern District of New York, former consular official Mr. Christopher Richardson wrote:

> As a Consular officer previously employed by the State Department my impression and interpretation of how we as officers were to apply the waiver process was as follows:
>
> (a) They gave us a list of things and we would go down the list one by one until we were able to determine at all possible cost that the person was not eligible to even apply for the waiver. My understanding was no one is to be eligible to apply.
>
> (b) If for some reason an applicant made it through the list and we had no choice but to determine we could find an applicant eligible to apply, regardless of the [Presidential Proclamation] instructions that we had "discretion to grant the waiver," we were not allowed to exercise that discretion. We were mandated to send to Washington that we found this

> applicant eligible to apply and Washington would then make the decision to grant or deny the waiver.

Ex. B, Christopher Richardson Decl.; *see also* Jeremy Stahl, *"The Waiver Process Is Fraud,"* Slate (June 15, 2018), https://slate.com/news-and-politics/2018/06/trump-travel-ban-waiver-process-is-a-sham-two-consular-officers-say.html. A second consular official submitted a declaration to the same effect. *Id.*

90. Mr. Richardson further stated: "[T]here really is no waiver [process] and the Supreme Court was correct to point out that the waiver [process] is merely 'window dressing.'" Ex. B, Christopher Richardson Decl. Mr. Richardson's description of the waiver process has been corroborated by another consular officer. Stahl, *supra*.

91. These statements reveal a process that conflicts with the plain text of the Proclamation, the information provided by the State Department on its website and in letters to U.S. senators, and arguments made by the government while defending against litigation challenging the ban. As described by Mr. Richardson, officers were instructed not to consider applicants for waivers in good faith and to seek to deny eligibility to even apply for a waiver. They also were not allowed to exercise their discretion to grant a waiver even where they did consider an applicant to be eligible.

92. Consistent with Mr. Richardson's representations, numerous visa applicants have stated that when they attended their visa interviews, officers informed them that waivers are processed in Washington, D.C. *See* Ex. D, Jay Gairson Decl.; *infra* Section IV. This is in conflict with the State Department's claims that a visa applicant's eligibility for a waiver is determined by the consular officer at the time of the interview.

93. As a result of the inconsistent statements, the absence of meaningful guidance, and the absence of an orderly process by which applicants may "demonstrate" their eligibility for a waiver, applicants do not know who is adjudicating their requests for waivers, what information they are considering, and what the standards really are to qualify for a waiver grant.

IV. The Plaintiffs

94. Plaintiffs include:

a. U.S. citizens and lawful permanent residents who are of Iranian, Libyan, Somali, Syrian, and Yemeni national origin and/or who have Iranian, Libyan, Somali, Syrian, and Yemeni family members who seek to enter the United States to permanently reside with their family members;

b. Iranian family members of U.S. citizens or lawful permanent residents who seek to enter the United States on family-based immigrant visas;

c. Yemeni nationals who are diversity visa lottery winners with family in the United States;

d. U.S. citizens and lawful permanent residents who are of Iranian, Libyan, Somali, Syrian, and Yemeni national origin and/or who have Iranian, Libyan, Somali, Syrian, and Yemeni family members who seek to enter the United States on non-immigrant visas;

e. Iranian family members of U.S. citizens or lawful permanent residents who seek to enter the United States on fiancé or visitor visas;

f. Iranian nationals who have approved immigrant visas because of their substantial investment in the United States; and

g. Iranian and Syrian nationals who have approved immigrant visas because of their extraordinary abilities.

95. Several Plaintiffs have approved visa petitions for their family members. Others have approved investment or extraordinary ability immigrant visas that have since been denied or stalled under the Proclamation. All are suffering a range of ongoing harms including separation from their family and loved ones; loss of jobs, research opportunities, and investments; emotional distress caused by extended separation from loved ones at critical times in their lives including pregnancy and childbirth; and a range of financial losses for visa application fees, travel costs, accommodation costs, medical fees, and other costs directly or indirectly associated with the visa application process.

96. Each of the Plaintiffs' circumstances fit directly under one or more of the examples offered in the Proclamation as illustration of circumstances under which a waiver grant may be appropriate. Many have received boilerplate letters denying them visas and waivers. Others have been informed that their eligibility for a waiver is being considered, but have had their applications stalled and have been awaiting a decision on their visa applications for months. Most have had no opportunity to submit documents or materials demonstrating their eligibility for a waiver.

97. Plaintiffs all seek clear guidance about the waiver process, an opportunity to apply in an orderly manner with full understanding of the criteria and methods by which waiver determinations are made, and full and timely adjudication of their waiver requests.

A. Family members seeking reunification in the United States

i. Tanaz Toloubeydokhti, Fathollah Tolou Beydokhti, and Behnaz Malekghaeini

98. Plaintiff Tanaz Toloubeydokhti is a U.S. citizen of Iranian origin who resides in San Diego, California.

99. Ms. Toloubeydokhti is employed as an obstetric-gynecologist and has dedicated her career to improving the lives of American mothers and their babies.

100. Ms. Toloubeydokhti petitioned for immigrant visas for her parents, Plaintiffs Fathollah Tolou Beydokhti and Behnaz Malekghaeini, both Iranian nationals, on September 1, 2016. Her petitions were approved, and their visa interviews were scheduled for December 21, 2017, at the U.S. Embassy in Yerevan, Armenia.

101. Despite the lack of guidance or information about waiver applications and criteria for consideration, Mr. Tolou Beydokhti and Ms. Malekghaeini put together documents they believed would demonstrate that they meet the criteria for a waiver under the terms of the Proclamation. But when they attempted to present those documents to the consular official, the official refused to review them, stated that they did not qualify for a waiver, and stated that their visas were denied.

102. Mr. Tolou Beydokhti and Ms. Malekghaeini's cases fit within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

103. Ms. Toloubeydokhti has suffered significant emotional distress because she has been deprived of the opportunity to have her parents present during her pregnancy and at the birth of her child. Her parents have similarly suffered emotional distress at their separation from their daughter during her time of need.

104. The family has also suffered and is continuing to suffer significant financial losses. They have paid filing fees and travel costs which they will be unable to recover. Ms. Toloubeydokhti now also has to incur significant childcare expenses in the absence of her parents, who would have helped take care of her child while she is at work.

ii. Afrooz Kharazmi and Afshan Alamshah Zadeh

105. Plaintiff Afrooz Kharazmi, a U.S. citizen of Iranian origin residing in Loveland, Ohio, filed an immigrant visa petition with USCIS on June 1, 2004 for her sister, Plaintiff Afshan Alamshah Zadeh, an Iranian national currently residing in Iran.

106. Ms. Alamshah Zadeh waited patiently for 12 years for her priority date[9] to become current.

107. USCIS approved her petition in October 2016. The U.S. Embassy in Abu Dhabi, UAE, scheduled Ms. Alamshah Zadeh's immigrant visa interview for January 7, 2018.

108. Ms. Alamshah Zadeh attended the interview and was informed during the interview that her immigrant visa was denied pursuant to the Proclamation.

109. At no point was Ms. Alamshah Zadeh informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation.

110. At no point was Ms. Alamshah Zadeh provided an opportunity to apply for a waiver or to submit documents in support of such application.

111. Accordingly, the consular officer was not made aware of and likely did not consider any factors that would have been relevant to determining whether continuing separation would cause her and her family members "undue hardship." Ms. Alamshah Zadeh has been living in limbo for years while waiting to rejoin her family in the United States, and has not settled down or planned for her future in Iran because she reasonably believed that she would soon be reunited with her two U.S. citizen parents and her U.S. citizen sister.

112. Ms. Alamshah Zadeh's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

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[9] An applicant's priority date is the date upon which her application was filed. Unless the applicant is a spouse, parent, or minor child of a U.S. citizen, the applicant must wait until his or her priority date becomes "current" before she can apply for adjustment of her status to that of a lawful permanent resident. For siblings, priority dates can take more than a decade to become current.

113. Ms. Kharazmi and Ms. Alamshah Zadeh have endured years of separation from each other. Ms. Alamshah Zadeh's entire family are U.S. citizens residing in the United States; she is the only family member left in Iran and now risks being permanently separated from them.

114. Ms. Kharazmi and Ms. Alamshah Zadeh have also paid thousands of dollars in attorneys' fees, filing fees, travel costs, and medical fees, which they will be unable to recover.

iii. Dr. Najib Adi

115. Plaintiff Dr. Najib Adi is a U.S. citizen of Syrian origin who owns a highly successful dental practice in Gainesville, Virginia. He employs close to 20 people and provides dental services to well over 4,000 patients.

116. Since war broke out in Syria in 2011, Dr. Adi has been unable to visit his family back home. His father was deceased in 2014 and he was not able to say goodbye or to attend his funeral. His mother is a 70-year-old widow living in war-torn Damascus. He wishes to bring her home so that she can spend her golden years with him, his wife, and his two children and so they can take care of her as she grows older.

117. In February 2017, he petitioned for a family-based immigrant visa for his mother. The petition was approved in August 2017, and her interview was scheduled at the U.S. consulate in Amman, Jordan for December 26, 2017.

118. Hoping to bring his mother home with him after the interview, Dr. Adi traveled to Jordan and went with his mother to the interview.

119. At no point during this process was Dr. Adi or his mother informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation. However, on his own initiative and with the assistance of an immigration attorney, he prepared a letter and documentary evidence outlining the reasons his mother should be granted a waiver under the

Proclamation, and presented this evidence to the consular official at the interview. The consular official told Dr. Adi and his mother that because of the Proclamation, he is unable to grant her a visa even though everything looks to be in order, but that she would be considered for a waiver grant.

120. For more than seven months since that time, Dr. Adi and his mother have been waiting for word on whether she has been granted a waiver. They have received no further information despite multiple queries, including a congressional inquiry, about the status of her case.

121. Dr. Adi is suffering severe emotional distress at his separation from his mother, and his feeling of helplessness at not being able to take care of her when she needs him. He is worried about her safety in Syria and only wishes to bring her home so they can make up for lost time being apart from each other. Dr. Adi is additionally suffering emotional distress because he feels he is being treated like a second-class citizen and not being allowed to access the full privileges of citizenship due to his religion and national origin.

122. Dr. Adi has paid thousands of dollars in attorneys' fees, filing fees, travel costs, and medical fees, which he will be unable to recover.

iv. Ismail Alghazali

123. Plaintiff Mr. Ismail Alghazali is a U.S. citizen of Yemeni origin currently residing in Djibouti. He was compelled to leave his home in the United States in order to be with his Yemeni wife, who has been unable to come to the United States because of the Proclamation.

124. He petitioned for a family-based immigrant visa for his wife in or around June 2016, and the petition was approved on November 23, 2016. Her interview was scheduled for January 3, 2018 at the U.S. consulate in Djibouti.

125. She attended her interview and was informed immediately that her visa was denied and that she would not be considered for a waiver.

126. At no point was Mr. Alghazali or his wife informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation.

127. At no point was Mr. Alghazali or his wife provided an opportunity to apply for a waiver or to submit documents in support of such application.

128. Mr. Alghazali's wife's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

129. Mr. Alghazali and his wife are currently stuck in Djibouti, where life is difficult and extremely expensive. Mr. Alghazali was forced to leave his job in the United States because his wife, who was pregnant at the time, could not be on her own in Djibouti. They are unable to go to Yemen, which is currently in the throes of a violent civil war the United Nations has described as the worst humanitarian crisis in the world.[10] There is no security or stability; schools and health centers are closed; and there is no safe drinking water, access to food, or electricity in large portions of the country.

130. Mr. Alghazali and his wife are experiencing ongoing difficulties in Djibouti on a number of levels. About a month after her interview, Mr. Alghazali's wife went into labor in the middle of the night. It took Mr. Alghazali a long time to find a taxi or an ambulance to take her to the hospital. When he finally found a taxi that would take them to the hospital, his wife was already

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[10] *See* Daniel Nikbakht & Sheena McKenzie, *The Yemen war is the world's worst humanitarian crisis, UN says,* CNN (April 3, 2018), https://www.cnn.com/2018/04/03/middleeast/yemen-worlds-worst-humanitarian-crisis-un-intl/index.html; U.S. Dep't of State, *Yemen Travel Advisory* (Jul 5, 2018), https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/yemen-travel-advisory.html.

in the process of delivering their baby, who was born in the taxi cab with no medical assistance. He caught the baby in his hands and held him until they arrived at the hospital. Since that time, his wife has suffered physical and emotional distress because of this experience. They continue to live in extremely difficult circumstances in Djibouti, with no ability to work or to study.

131. Mr. Alghazali's entire family are U.S. citizens. All reside in the United States, except for his younger sister who accompanied him to Djibouti because he is her legal guardian. She suffers from a speech disability, insomnia, depression, and loss of concentration. He is unable to properly provide for her in Djibouti, and she is unable to access the services she needs. He desperately needs to return to the United States with his wife, his infant son, and his sister, in order to be able to take care of his family.

v. Malik Almathil

132. Plaintiff Malik Almathil is a U.S. citizen residing in New York City.

133. In March 2015, he petitioned for a family-based immigrant visa for his wife, a Yemeni national currently residing in Jordan. The petition was approved shortly thereafter, and his wife attended her visa interview in Djibouti on July 31, 2017.

134. On December 17, 2017, shortly after the Proclamation went into full effect, she received a boilerplate denial of a visa and waiver.

135. At no point was Mr. Almathil or his wife informed that his family could seek to "demonstrate" their eligibility for a waiver under the terms of the Proclamation.

136. At no point was Mr. Almathil or his wife provided an opportunity to apply for a waiver or to submit documents in support of such application.

137. Mr. Almathil's wife's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

138. Mr. Almathil is suffering severe emotional distress at his inability to be with his wife and to bring her home with him to the United States. Because of the situation in Yemen, his wife had to leave the country in 2015 and is unable to return. Mr. Almathil had to give up continuing his college education in order to go be with his wife while they awaited processing of her visa application, and he spent two years with her in Djibouti trying to bring her home. Because of the significant expenses associated with living in Djibouti, he ultimately had to return to the United States to resume earning a living so that he can provide for himself and his wife. His ongoing separation from his wife is the most difficult thing he has ever had to endure.

139. In addition to the significant costs of living in Djibouti, Mr. Almathil has spent thousands of dollars in filing fees, travel costs, and other expenses related to his wife's visa application, which he will be unable to recover.

vi. Khalil Ali Nagi

140. Plaintiff Khalil Ali Nagi is a U.S. citizen residing in Schenectady, New York with his four-year-old U.S. citizen daughter.

141. In December 2015, he petitioned for a family-based immigrant visa for his Yemeni wife. The petition was approved in 2016, and her interview was scheduled in Djibouti for July 2017. The airport in Yemen was closed at that time, however, and she was unable to leave the country to attend her interview, which was rescheduled for October 31, 2017. Mr. Nagi traveled with her to Djibouti, where she attended the interview and was told that her application looked good and that her visa would be approved.

142. Unable to return to Yemen and without an issued visa to the United States, Mr. Nagi, his wife, and their four-year-old child remained in Djibouti to wait for her visa to be issued. But in March 2018, she was informed that she would not be approved for a visa or a waiver.

143. Mr. Nagi had to return to the United States along with his four-year-old daughter, forced to leave his wife behind. He is experiencing severe emotional distress because of their separation, and his four-year-old daughter constantly cries for her mother. He feels that he is unable to comfort her and that the distress she is suffering because of her separation from her mother is having lasting negative effects on her. He is desperate to be reunited with his wife so that their family can live together in their home in the United States.

144. Mr. Nagi has paid thousands of dollars in living expenses, travel costs, filing fees, and other costs related to his wife's visa application, which he will be unable to recover.

vii. Hezam Alarqaban

145. Plaintiff Hezam Alarqaban is a lawful permanent resident of Yemeni origin residing in Oakland, California.

146. In March 2012, he petitioned for a family-based immigrant visa for his wife and his eleven children, all of whom are Yemeni nationals. The petition was approved in 2016, and the family had their interview at the U.S. consulate in Malaysia in March 2016.

147. As the situation in Yemen deteriorated, the family moved to Djibouti in December 2016. They continued to wait for issuance of their visas, which were finally stamped in their passports in February 2017.

148. In June 2017, however, their visas were canceled and stamped "revoked without prejudice." They submitted additional documents and in October 2017, their application was once again sent to the embassy in Djibouti.

149. They attended another interview at the U.S. consulate in Djibouti in February 2018 and did not receive any further communication until June 2018, when they were told that their eligibility for a waiver was being reconsidered.

150. At no point was Mr. Alarqaban or his family informed that his family could seek to "demonstrate" their eligibility for a waiver under the terms of the Proclamation.

151. At no point was Mr. Alarqaban or his family provided an opportunity to apply for a waiver or to submit documents in support of such application.

152. Mr. Alarqaban's family's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

153. Mr. Alarqaban has suffered and is continuing to suffer severe emotional distress at his separation from his family. He is not able to afford travel to visit his family. During the entire six years that they have been separated from each other, he has only been able to spend a total of two months with his wife and children.

154. Mr. Alarqaban has incurred enormous expense supporting his family in Djibouti, where cost of living is extremely high. He has also paid thousands of dollars in filing fees, travel costs, medical fees, and other costs associated with the visa application process, which he will be unable to recover.

viii. Abdurraouf Gseaa

155. Plaintiff Abdurraouf Gseaa is a U.S. citizen of Libyan origin who resides in Houston, Texas. He petitioned for a family-based immigrant visa petition for his wife, who is a Libyan national, on October 2016.

156. USCIS approved the petition and scheduled her for an interview in April 2018 at the U.S. consulate in Casablanca, Morocco. She was unable to obtain a visa to travel to Morocco, however, and the interview had to be rescheduled.

157. His wife's interview was then moved to the U.S. consulate in Tunis, and rescheduled for July 12, 2018. She attended her interview and was told that her eligibility for a waiver would be considered but that it would take several months to obtain a response.

158. At no point was Mr. Gseaa or his wife informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation.

159. At no point was Mr. Gseaa or his wife provided an opportunity to apply for a waiver or to submit documents in support of such application.

160. Mr. Gseaa's wife's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

161. Mr. Gseaa's wife is currently about six months pregnant with their first child, and she is alone in Libya, where the situation is precarious and the country has been ravaged by violence and war. Because of their separation and in order to give himself more flexibility to spend time with her, Mr. Gseaa had to quit a stable and well-paying job and has now become an Uber driver. He travels back and forth to Libya because he cannot bear to leave his wife alone, especially while she is pregnant with their baby. He cannot wait for the time when he can bring her home and they can live together and raise their child in the United States.

162. Mr. Gseaa has spent thousands of dollars in attorneys' fees, filing fees, travel costs, and medical fees, which he will be unable to recover.

ix. Sudi Wardere

163. Plaintiff Sudi Wardere is a U.S. citizen of Somali origin who resides in Kirkland, Washington. She petitioned for a family-based immigrant visa for her husband in October 2016. Her husband is a Somali national who has resided in South Africa since 2005.

164. USCIS approved the visa petition on March 31, 2017, and Ms. Wardere's husband attended his interview at the U.S. consulate in South Africa on February 5, 2018. The consulate then interviewed him again on March 22, 2018. Since that time, they have been awaiting a decision on his visa application.

165. At no point was Ms. Wardere or her husband informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

166. At no point was Ms. Wardere or her husband provided an opportunity to apply for a waiver or to submit documents in support of such application.

167. Ms. Wardere's husband's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

168. Ms. Wardere has suffered great hardship because of their separation from each other. On May 26, 2018, she gave birth to their son, alone and without her husband's support. Her husband has yet to meet their child because she is unable to afford travel to South Africa while they are maintaining two separate households, and she cannot leave her job for long periods of time.

169. Ms. Wardere was compelled to go back to work immediately after having her baby, who is now in daycare. He is frequently sick and she has had to take him to the emergency room on four separate occasions. She had to spend Eid-al-Fitr, one of the most important Muslim holidays, without her husband, and has had enormous difficulty juggling work and being a single parent to their child.

170. Ms. Wardere's husband is also in a precarious situation. He owns a store in South Africa, which has been closed several times because of riots. Members of the Somali community in South Africa are frequently subjected to xenophobic attacks, and his store was robbed several times.

171. Ms. Wardere has additionally suffered emotional distress because she believes she is being treated differently on account of her religion and nationality, and is not being allowed to access all the privileges of being a U.S. citizen simply because of her religion and national origin.

172. In addition to the costs of maintaining two households, Ms. Wardere and her husband have also spent thousands of dollars in filing fees and medical fees, which they will be unable to recover.

x. Khadija Aden

173. Plaintiff Khadija Aden is a lawful permanent resident of Somali origin who resides in Seattle, Washington. In October 2015, she petitioned for a family-based immigrant visa for her son, who is Somali but has never been to Somalia.

174. Her petition was approved and her son attended his interview at the U.S. consulate in Addis Ababa, Ethiopia on June 11, 2018. His visa was denied at the interview, and he received a boilerplate letter stating that he is ineligible for a waiver.

175. At no point was Ms. Aden or her son informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

176. At no point was Ms. Aden or her son provided an opportunity to apply for a waiver or to submit documents in support of such application.

177. Ms. Aden's son's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

178. In fact, Ms. Aden's son arguably should not even be subject to the ban, as he has never been to Somalia and therefore should not be considered a Somali national. He was born in a refugee camp in Kenya and has lived in that camp his entire life. His parents left Somalia as refugees, and his father is recently deceased.

179. Ms. Aden has suffered severe emotional distress because of her separation from her son. She is constantly worried about his safety and well-being, and is terrified at the prospect that he would have to go back to Somalia.

180. Ms. Aden has also spent thousands of dollars in attorneys' fees, filing fees, medical costs, and other expenses related to their visa application, which she will be unable to recover.

B. Fiancés seeking reunification in the United States

i. Soheil Vazehrad and Atefehossadat Motavaliabyazani

181. Plaintiff Soheil Vazehrad is a U.S. citizen of Iranian origin who is employed as a registered dental hygienist and resides in Napa, California.

182. Mr. Vazehrad filed an application with USCIS for a fiancé visa for Plaintiff Atefehossadat Motavaliabyazani, an Iranian national currently in Iran, in April 2016.

183. USCIS approved Mr. Vazehrad's petition on May 11, 2016.

184. Ms. Motavaliabyazani attended her interview at the U.S. Embassy in Yerevan, Armenia, on October 20, 2016, and was told that her case would go through routine administrative processing.

185. On January 4, 2018, she received a boilerplate email stating:

> Dear Applicant:
>
> This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.
>
> Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

Ex. L, Email sent by U.S. Embassy in Yerevan, Armenia, to Atefehossadat Motavaliabyazani (Jan. 4, 2018).

186. At no point was Ms. Motavaliabyazani informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation.

187. At no point was Ms. Motavaliabyazani provided an opportunity to apply for a waiver or to submit documents in support of such application.

188. Ms. Motavaliabyazani's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

189. Mr. Vazehrad and Ms. Motavaliabyazani are suffering ongoing severe emotional and mental distress because of their indefinite separation from each other.

190. Mr. Vazehrad is suffering from loss of consortium since he has been deprived and continues to be deprived of the opportunity to be with his fiancée. He is also forced to take significant breaks from work and to incur significant expenses to travel to meet his fiancée outside of the United States.

191. Mr. Vazehrad and Ms. Motavaliabyazani have also paid filing fees, travel costs, and other costs associated with the visa application process, which they are unable to recover.

C. Diversity visa applicants with family members in the United States

i. Ali and Aziz Altuhaif

192. Plaintiff Ali Altuhaif is a U.S. citizen of Yemeni origin who resides in Dearborn, Michigan with most of his family. He has been in the United States since 1992. He seeks to be reunited with his Yemeni son, Plaintiff Aziz Altuhaif.

193. Aziz Altuhaif won an immigrant visa through the diversity visa lottery.[11] He completed all the necessary paperwork and attended his interview in Djibouti in July 2018, where he was told

[11] The Diversity Immigrant Visa Program, known as the "diversity visa lottery," is a State Department-administered program that "makes up to 50,000 immigrant visas available annually, drawn from random selection among all

by the consular official that he is categorically ineligible for a waiver because of the type of visa he is seeking.

194. At no point was Mr. Altuhaif informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

195. At no point was Mr. Altuhaif provided an opportunity to apply for a waiver or to submit documents in support of such application.

196. Mr. Altuhaif's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

197. He is currently stranded in Djibouti, but may have to return to war-torn Yemen soon because his status is so uncertain. If he does not obtain an immigrant visa by September 30, 2018, he will lose his opportunity to come to the United States to rejoin his family.

198. Both Mr. Ali and Mr. Aziz Altuhaif, along with the rest of their family, are suffering emotional distress at their ongoing separation and because of the precarious circumstance in which Mr. Aziz Altuhaif has been placed.

199. Mr. Aziz Altuhaif has paid thousands of dollars in filing fees, travel costs, and other expenses relating to his visa application, which he is unable to recover.

D. Family members applying for visitor visas

i. Bamshad Aziz, Roghayeh Azizikoutenaei, and Hojjatollah Azizikoutenaei

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entries to individuals who are from countries with low rates of immigration to the United States." U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec., *Green Card Through the Diversity Immigrant Visa Program* (last updated Jan. 11, 2018) https://www.uscis.gov/greencard/diversity-visa. Diversity visa lottery winners, including Mr. Altuhaif, who entered the lottery in Fiscal Year 2018 must complete their adjustment of status process by September 30, 2018 or they will lose their ability to obtain visas to enter the United States through this program. *Id.*

200. Plaintiff Bamshad Azizi is a lawful permanent resident of Iranian origin residing in San Jose, California. He is the co-founder of a cybersecurity startup in the United States.

201. Mr. Azizi's parents Plaintiffs Roghayeh Azizikoutenaei and Hojjatollah Azizikoutenaei applied for B1/B2[12] tourist visas to come visit him and his sister in the United States. Mrs. Azizikoutenaei was diagnosed with cancer about a year ago and had to undergo two surgeries and a series of intense chemotherapy sessions. Mr. Azizikoutenaei had also had surgery recently. They both were considerably weakened by their illnesses and wanted nothing more than to spend time with their family members as they continue to recover.

202. Mr. and Mrs. Azizikoutenaei attended their interview at the U.S. consulate in Dubai, UAE, on September 12, 2017, twelve days before the signing of the Proclamation, and were told that their visas would be ready in two weeks.

203. On October 3, 2017, they received an email from the Embassy requesting that they send their passports so that their visas could be stamped. They complied with this request.

204. Eleven days later, their passports were returned with no visas and with a letter stating that their applications had been placed in administrative processing.

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[12] B1 and B2 visas are both nonimmigrant visitor visas "for persons who want to enter the United States temporarily for business (visa category B-1), for tourism (visa category B-2), or for a combination of both purposes (B-1/B-2)." U.S. Dep't of State, *Visitor Visa*, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html (last visited July 29, 2018). Examples of activities permitted with a B1 visitor visa include: "Consult[ing] with business associates"; "Attend[ing] a scientific, educational, professional, or business convention or conference"; "Settl[ing] an estate"; and "Negotiat[ing] a contract." *Id.* Examples of activities permitted with a B2 visitor visa include: "Tourism"; "Vacation"; "Visit[ing] with friends or relatives"; "Medical treatment"; "Participation in social events hosted by fraternal, social, or service organizations"; "Participation by amateurs in musical, sports, or similar events or contests, if not being paid for participating"; and "Enrollment in a short recreational course of study, not for credit toward a degree." *Id.*

205. After following up multiple times with the Embassy and receiving only automated responses, Mr. and Mrs. Azizikoutenaei received boilerplate rejection letters on January 10, 2018.

206. At no point were Mr. and Mrs. Azizikoutenaei informed that they could seek to "demonstrate" their eligibility for a waiver under the terms of the Proclamation.

207. At no point were Mr. and Mrs. Azizikoutenaei provided an opportunity to apply for a waiver or to submit documents in support of such application.

208. Accordingly, the consular officer was not made aware of the particular reasons they wanted to visit their family in the United States or their recent medical circumstances.

209. Mr. and Mrs. Azizikoutenaei's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

210. The entire family has suffered and is continuing to suffer significant emotional distress because of their ongoing separation from each other. Mr. and Mrs. Azizikoutenaei continue to be weakened by their surgeries and medical conditions, and they and Mr. Aziz are distressed at their inability to spend time with each other.

211. The family has also paid thousands of dollars in filing fees, travel costs, and other costs associated with the visa application process, which they are unable to recover.

ii. Maral Charkhtab Tabrizi, Zahra Rouzbehani, and Bahram Charktab Tabrizi

212. Plaintiff Maral Charkhtab Tabrizi is a lawful permanent resident of Iranian origin residing in Arizona who is married to a U.S. citizen and who recently had her first child.

213. Her parents, Plaintiffs Zahra Rouzbehani and Bahram Charkhtab Tabrizi, who have traveled to the United States many times in the past, applied for tourist visas while she was pregnant to witness the birth of their first grandchild and to provide support to their daughter.

214. They attended their interviews at the U.S. consulate in Dubai, UAE, on October 19, 2017. Ms. Rouzbehani was approved immediately, but Mr. Charkhtab Tabrizi's case was placed in administrative processing. Ms. Rouzbehani elected to wait for her husband's administrative processing to be completed before sending her passport to be stamped with the visa, so that they could travel to the United States together.

215. Immediately after the Supreme Court allowed the Proclamation to go into effect in December 2017, Ms. Rouzbehani sent her passport to the consulate in order for her visa to be issued.

216. Shortly thereafter, however, the passport was returned without a visa and both their visas were refused pursuant to the Proclamation.

217. At no point were Mr. Tabrizi and Ms. Rouzbehani informed that they could seek to "demonstrate" their eligibility for a waiver under the terms of the Proclamation.

218. At no point were Mr. Tabrizi and Ms. Rouzbehani provided an opportunity to apply for a waiver or to submit documents in support of such application.

219. Accordingly, the consular officer was not made aware of specific circumstances that are highly relevant to a meaningful waiver adjudication. Mr. Tabrizi and Ms. Rouzbehani wanted to be there to support their daughter for several compelling reasons:

220. First, Ms. Charkhtab Tabrizi's household finances depend heavily on her salary. She is a contractor for Google and had been there for less than 12 months at the time she gave birth to her child. She therefore was not eligible for paid maternity leave under California laws or under the

Family Medical Leave Act, and had accordingly planned to return to work as soon as possible. Without her parents, Ms. Charkhtab Tabrizi was unable to return to work as quickly as she had hoped.

221. Second, Ms. Charkhtab Tabrizi has a connective tissue disorder which has caused her severe pain during her pregnancy and makes her daily activities very difficult. She had hoped that her parents could be there to support her during her recovery.

222. Instead, she had to remain at home with her baby by herself for two and a half months while recovering from an emergency cesarean section, and during that time was diagnosed with depression. She is currently unable to afford good daycare and has resorted to temporarily relying on her sister-in-law to take care of their child after a period of unpaid leave during which she and her husband depleted their savings. They had also been hoping that her parents could meet her in-laws for the first time when they visited, but her father-in-law has passed away in the intervening time since they applied for the visa. She continues to be in desperate need of emotional and logistical support from her parents.

223. Ms. Rouzbehani and Mr. Tabrizi's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

224. The denial of Ms. Rouzbehani's and Mr. Charkhtab Tabrizi's visas is causing Ms. Charkhtab Tabrizi severe financial hardship.

225. All three family members have also suffered significant emotional distress. Ms. Tabrizi was deprived of the opportunity to have her parents present during her pregnancy, and her parents have been unable to be there to support her in her time of need. Ms. Rouzbehani and Mr. Tabrizi were unable to be there for the birth of their first grandchild, and were unable to ever meet their daughter's father-in-law.

226. Ms. Tabrizi has also suffered increased physical pain because she has to carry out daily tasks for which she would have been able to rely on her parents' assistance.

227. Ms. Charkhtab Tabrizi and her parents have paid thousands of dollars in filing fees, travel costs, and other costs associated with the visa application process, which they will be unable to recover.

iii. Maryam Mozafari and Mohammad Mehdi Mozaffary

228. Plaintiff Maryam Mozafari is a lawful permanent resident of Iranian origin, currently residing in San Francisco, California. She was pregnant and wanted her parents, her mother and Plaintiff Mr. Mohammad Mehdi Mozaffary, to come visit her and provide her with much-needed support.

229. Her mother and Mr. Mozaffary had both visited the United States in 2014, and had left the country well in advance of the expiration of their visas and their approved duration of stay in the United States.

230. On December 28, 2016, they applied for tourist visas at the U.S. consulate in Dubai, UAE. Her mother's visa was granted immediately. Mr. Mozaffary was asked for his mandatory military service documents. He did not have them with him, as the documents were not mentioned in the list of required documents for the visa application. He was asked to reapply and bring the documents with him to the next interview.

231. Because of the timing of the first two travel bans, Mr. Mozaffary had to delay his interview, and was not able to get back to the consulate until July 30, 2017. He was told by the consular officer that his documents appeared to be in order, but that he would be sending Mr. Mozaffary additional forms to fill out. Mr. Mozaffary received the forms in August 2017 and returned them to the consulate shortly thereafter.

232. For the next several months, Ms. Mozafari and Mr. Mozaffary sent several emails to the consulate to inquire about the status of their cases, but received no reply or a system-generated automatic response.

233. On January 11, 2018, Mr. Mozaffary's visa was denied pursuant to the Proclamation.

234. At no point was Mr. Mozaffary informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

235. At no point was Mr. Mozaffary provided an opportunity to apply for a waiver or to submit documents in support of such application.

236. Mr. Mozaffary suffers from a heart condition which requires that he be accompanied at all times. Because he was unable to obtain a visa, Ms. Mozafari's mother was only able to come visit her in the United States for a brief time, as she felt torn between her daughter and being forced to leave her ailing husband behind.

iv. Clyde Jean Tedrick II, Mitra Farnoodian-Tedrick, Farjollah Farnoudian, and Farangis Emami

237. Plaintiff Clyde Jean Tedrick II is a U.S. citizen residing in Rockville, Maryland, with Plaintiff Mitra Farnoodian-Tedrick, a lawful permanent resident of Iranian origin. They assisted Ms. Farnoodian-Tedrick's parents, Plaintiffs Farajollah Farnoudian and Farangis Emami, with applying for tourist visas to attend their wedding celebration that was planned for May 27, 2018.

238. Mr. Farnoudian and Ms. Emami have visited the United States in the past and have fully complied with the terms of their tourist visas.

239. Mr. Farnoudian and Ms. Emami attended their visa interview on October 17, 2017 at the U.S. consulate in Dubai, UAE.

240. Mr. Farnoudian's visa application was placed in administrative processing, but Ms. Emami's visa application was approved.

241. Mr. Farnoudian received an email on January 8, 2018, informing him that his visa had been denied pursuant to the Proclamation.

242. Ms. Emami's visa, meanwhile, was revoked. She was never notified that her already-approved visa had been revoked pursuant to the Proclamation, and she only found out that that was the case after checking the status of her visa online.

243. At no point was anyone in the family informed that Mr. Farnoudian and Ms. Emami could seek to "demonstrate" their eligibility for a waiver under the terms of the Proclamation.

244. At no point were Mr. Farnoudian and Ms. Emami provided an opportunity to apply for such a waiver or to submit documents in support of such application.

245. Mr. Tedrick and Ms. Farnoodian-Tedrick were therefore forced to cancel their planned wedding celebration until such time that her parents would be able to attend.

246. All family members have suffered emotional distress because of their inability to celebrate Mr. Tedrick and Ms. Farnoodian-Tedrick's wedding together with their closest family members. The family has also suffered significant financial losses. Mr. Tedrick and Ms. Farnoodian-Tedrick forfeited almost $4,000 in non-refundable deposits because they were compelled to cancel their planned celebration. Mr. Farnoudian and Ms. Emami also paid thousands of dollars in filing fees, travel costs, and other costs associated with the visa application process, which they will be unable to recover.

E. Business and investment visa applicants

i. Behnam Babalou

247. Mr. Behnam Babalou is an Iranian national who invested five hundred thousand dollars ($500,000) in the United States as part of his petition for an employment-based fifth preference (EB-5) investment visa[13] in 2011.

248. USCIS adjudicated his case and sent him an approval notice four years later, on December 15, 2015. Mr. Babalou then attended his immigrant visa interview at the U.S. Embassy in Yerevan, Armenia, on May 24, 2016, after which his case was placed in administrative processing.

249. On December 22, 2017, six years after his initial investment, he received a boilerplate email denying him a visa and a waiver under the Proclamation.

250. At no point was Mr. Babalou informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

251. At no point was Mr. Babalou provided an opportunity to apply for a waiver or to submit documents in support of such application.

252. His immigration attorneys have since requested that he be considered for a waiver, but he has not received a response.

253. Mr. Babalou is at risk of losing his $500,000 investment in the United States. Because he remains in Iran, he is unable to fulfill the duties assigned to him as part of running his business, unable to oversee the U.S. citizens he has employed, and therefore unable to effectively grow his business and continue contributing to the U.S. economy.

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[13] The EB-5 investment visa is designed to give permanent resident status to entrepreneurs (and their spouses and unmarried children under 21) who (1) "[m]ake the necessary investment in a commercial enterprise in the United States" (either $500,000 or $1 million); and (2) "[p]lan to create or preserve 10 permanent full-time jobs for qualified U.S. workers." U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec., *EB-5 Immigrant Investor Program*, https://www.uscis.gov/eb-5 (last visited July. 29, 2018).

254. In addition to the large investment he made into a U.S. business, Mr. Babalou has incurred substantial incidental costs over the last seven years, including $50,000 paid to a regional center for assistance with overseeing his investment and thousands of dollars more in attorneys' fees, filing fees, travel costs, and medical fees. These are costs Mr. Babalou will be unable to recover.

ii. Hoda Mehrabi Mohammad Abadi

255. Ms. Hoda Mehrabi Mohammad Abadi is an Iranian national who invested five hundred thousand dollars ($500,000.00) in the United States as part of her petition, filed on August 5, 2014, for an employment-based fifth preference (EB-5) investment visa.

256. USCIS adjudicated her case and sent her an approval notice nearly two years later, on June 9, 2016. Ms. Mehrabi Mohammad Abadi attended her immigrant visa interview at the U.S. Embassy in Yerevan, Armenia, on February 23, 2017, after which her case was placed in administrative processing.

257. On December 14, 2017, her attorney received the same boilerplate email denying her a visa and a waiver under the Proclamation.

258. At no point was Ms. Mehrabi Mohammad Abadi informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation.

259. At no point was Ms. Mehrabi Mohammad Abadi provided an opportunity to apply for a waiver or to submit documents in support of such application.

260. Her attorney contacted the embassy requesting that Ms. Mehrabi Mohammad Abadi's case be considered for a waiver from the Proclamation. The Embassy responded again on December 17, 2017, with the following:

Dear inquirer,

> Unfortunately, your case is not eligible for a waiver under Presidential Proclamation 9645. This refusal under Section 212(f) of the Immigration and Nationality Act applies only to the current visa application. Please be advised that Presidential Proclamation 9645 currently restricts issuance of most visas to nationals of Iran and seven other countries.

Ex. M, Email sent by U.S. Embassy in Yerevan, Armenia, to Hoda Mehrabi Mohammad Abadi (Dec. 17, 2017).

261. Accordingly, Ms. Mehrabi Mohammad Abadi was unable to submit documents in support of a waiver application and did not receive individualized consideration for a waiver.

262. Ms. Mehrabi Mohammad Abadi is also at risk of losing a $500,000 investment in the United States. Because she remains in Iran, she is unable to fulfill the duties assigned to her as part of running a business, unable to oversee the U.S. citizens she has employed, and therefore unable to effectively grow her business and continue contributing to the U.S. economy.

263. In addition to her large investment, Ms. Mehrabi Mohammad Abadi incurred substantial incidental costs, including $50,000 paid to a regional center for assistance with overseeing her investment and thousands of dollars more in attorneys' fees, filing fees, travel costs, and medical fees. These are costs Ms. Mehrabi Mohammad Abadi will never recover.

F. Individuals with extraordinary ability

i. *Dr. Mahdi Afshar Arjmand*

264. Plaintiff Dr. Mahdi Afshar Arjmand is an Iranian national who filed for an EB-1A[14] (alien with extraordinary ability) immigrant visa on December 27, 2016, and received an approval notice on January 9, 2017.

265. He attended his immigrant visa interview with his family on July 25, 2017 at the U.S. Embassy in Yerevan, Armenia. The officer informed them that their case looked good, but just needed to go through administrative processing.

266. On January 12, 2018, the Embassy emailed Dr. Afshar Arjmand the same boilerplate denial letter that Mr. Babalou and Ms. Mehrabi Mohammad Abadi received.

267. At no point was Dr. Afshar Arjmand informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

268. At no point was Dr. Afshar Arjmand provided an opportunity to apply for a waiver or to submit documents in support of such application.

269. In order to approve his visa, USCIS made a required finding that Dr. Afshar Arjmand has "extraordinary ability"—a fact that should render his entry in the national interest of the United States. Dr. Afshar Arjmand had a job offer from the University of California, San Diego, to work as a researcher and professor. The Embassy refused to consider Dr. Afshar Arjmand for a waiver even though the university sent multiple emails to the Embassy requesting that it issue Dr. Afshar Arjmand's visa because of his prodigious talent and expertise.

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[14] To qualify for an EB-1A visa an applicant "must be able to demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim." U.S. Citizenship & Immigration Servs., U.S. Dep't of Homeland Sec., *Employment-Based Immigration: First Preference EB-1* (last updated Oct. 29, 2015), https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1.

270. Dr. Afshar Arjmand's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver would be appropriate.

271. Dr. Afshar Arjmand risks losing a once-in-a-lifetime research and teaching opportunity at the University of California, San Diego, one of the world's leading public research universities.

272. In addition to this significant lost work and financial opportunity, Dr. Afshar Arjmand has paid thousands of dollars in attorneys' fees, filing fees, travel costs, and medical fees, which he will be unable to recover.

ii. Dr. Ehsan Heidaryan

273. Plaintiff Dr. Ehsan Heidaryan, a world-renowned professor of chemical engineering and an Iranian national, filed a petition for an employment-based first preference visa for aliens with extraordinary ability (EB-1A) on February 7, 2017.

274. Based on his impressive record of achievements in his field, USCIS approved Dr. Heidaryan's petition on March 3, 2017. He attended his immigrant visa interview at the U.S. Consulate General in Rio de Janeiro, Brazil, on December 23, 2017.

275. Thereafter, the Consulate emailed Dr. Heidaryan to inform him that since he is an Iranian national, his immigrant visa must be refused because of the Proclamation. Specifically, the consulate wrote:

> Dear Sir,
>
> Unfortunately your immigrant visa is refused under Presidential Proclamation 9645 and now considered closed. Do not need to fill out the questionnaire we sent by email.

Ex. N, Email sent by U.S. Consulate General in Rio de Janeiro, Brazil, to Dr. Ehsan Heidaryan (Dec. 27, 2017).

276. At no point was Dr. Heidaryan informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

277. At no point was Dr. Heidaryan provided an opportunity to apply for a waiver or to submit documents in support of such application.

278. In order to approve his visa, USCIS made a required finding that Dr. Heidaryan has "extraordinary ability"—a fact that should render his entry in the national interest of the United States.

279. Dr. Heidaryan's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver would be appropriate.

280. Dr. Heidaryan is losing the opportunity to conduct research and to teach in his area of expertise—chemical engineering—in the United States' top tier universities. Dr. Heidaryan also risks losing the opportunity to take advantage of the substantial resources U.S. universities have to more effectively further his research and, thus, the opportunity to contribute his expertise to the United States.

281. Dr. Heidaryan has also paid thousands of dollars in attorneys' fees, filing fees, travel costs, and medical fees, which he is unable to recover.

iii. Najmeh Maharlouei

282. Ms. Najmeh Maharlouei is an Iranian national currently residing in Shiraz, Iran, where she is employed as a health researcher and Associate Professor of Community Medicine at Shiraz University of Medical Sciences. She filed an application with USCIS for an immigrant

visa under the category of employment-based second preference (EB-2) with a National Interest Waiver[15] on June 20, 2015.

283. Ms. Maharlouei's case was approved on March 4, 2016, and she attended her immigrant visa interview at the U.S. Embassy in Yerevan, Armenia, on October 6, 2016. She was told at that interview that there were no problems with her case, but that she would have to undergo routine administrative processing.

284. Ms. Maharlouei received a boilerplate notice denying her visa application pursuant to the Proclamation on December 22, 2017.

285. At no point was Ms. Maharlouei informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation.

286. At no point was Ms. Maharlouei provided an opportunity to apply for a waiver or to submit documents in support of such application.

287. In order to approve her visa, USCIS made a required finding that Ms. Maharlouei has "extraordinary ability" and granted her a National Interest Waiver, which requires a determination that her entry would be in the national interest of the United States.

288. Ms. Maharlouei's case also fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver would be appropriate.

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[15] An applicant can acquire permanent residency under the EB-2 category if she is a foreign national who has an advanced degree and exceptional ability in the sciences, art, or business. U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec., *Employment-Based Immigration: Second Preference EB-2* (last updated Oct. 29, 2015, https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-second-preference-eb-2. This category usually requires that the applicant's employer get a labor certification from the U.S. Department of Labor, but an applicant can receive a National Interest Waiver of that requirement if she shows that her work is in the U.S. national interest.

289. Ms. Maharlouei is losing the opportunity to conduct research in the United States in her field of medical sciences, despite the fact that USCIS already deemed her research to be in the national interest of the United States. Ms. Maharlouei is also losing the opportunity to take advantage of American universities' substantial resources to more effectively further her research and to contribute her substantial expertise to the United States.

290. In addition, Ms. Maharlouei has also paid thousands of dollars in attorneys' fees, filing fees, travel costs, and medical fees, which she will be unable to recover.

iv. Nastaran Hajiheydari

291. Plaintiff Nastaran Hajiheydari is an Iranian national currently residing in Iran where she works in the field of Information Technology Business as an Associate Professor at the University of Tehran. She filed an application with USCIS for an immigrant visa under the category of employment-based second preference (EB-2) with a National Interest Waiver on October 14, 2016.

292. Her case was approved less than 40 days later in November 2016, and Ms. Hajiheydari and her family attended their immigrant visa interviews at the U.S. Embassy in Yerevan, Armenia, on October 26, 2017. Their cases were placed in routine administrative processing.

293. On January 16, 2018, Ms. Hajiheydari received a boilerplate email notice denying her family's visa applications pursuant to the Proclamation.

294. At no point was Ms. Hajiheydari informed that she could seek to "demonstrate" her eligibility for a waiver under the terms of the Proclamation.

295. At no point was Ms. Hajiheydari provided an opportunity to apply for such a waiver or to submit documents in support of such application.

296. In order to approve her visa, USCIS made a required finding that Ms. Hajiheydari has "extraordinary ability" and granted her a National Interest Waiver, which requires a determination that her entry would be in the national interest of the United States.

297. Ms. Hajiheydari's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver would be appropriate.

298. Ms. Hajiheydari is losing the opportunity to conduct research in the United States, despite the fact that USCIS already determined that her work is in the national interest of the United States. Ms. Hajiheydari is also losing the opportunity to take advantage of American universities' substantial resources to more effectively further her research and the opportunity to contribute her expertise to the United States.

299. In addition, Ms. Hajihevdari has also paid thousands of dollars in attorneys' fees, filing fees, travel costs, and medical fees, for herself and three family members, all of which she will be unable to recover.

v. Mohamad Hamami

300. Plaintiff Mohamad Hamami is a world-class Syrian violinist, composer, and conductor, and is an artist of extraordinary ability in the field of Arabic fusion music. Mr. Hamami is renowned internationally for his groundbreaking and unique cross-cultural fusions of Arabic music with musical genres from around the globe. Mr. Hamami is the conductor and soloist with the SharQ Orchestra – a one-of-a-kind Western-style ensemble of international symphony musicians playing traditional Arabic music. Due to his unparalleled talent and passion for Arabic fusion music, Mr. Hamami has collaborated with top producers, composers, and musicians from around the globe. He submitted an application for an EB-1 immigrant visa based on his extraordinary ability.

301. His visa was approved in November 2016, and he had his interview at the U.S. Embassy in Dubai, UAE, where he has resided for more than a decade.

302. After the ban went into effect, his attorneys attempted to request a waiver for him, but were told that he is ineligible for a waiver because he has insufficient ties to the United States—a factor that is neither a requirement for an EB-1 visa nor a requirement under the waiver factors set forth in the Proclamation.

303. At no point was Mr. Hamami informed that he could seek to "demonstrate" his eligibility for a waiver under the terms of the Proclamation.

304. At no point was Mr. Hamami provided an opportunity to apply for a waiver or to submit documents in support of such application.

305. Mr. Hamami's case fits within one of the examples provided in the Proclamation as a situation in which a grant of a waiver may be appropriate.

306. Mr. Hamami is losing the opportunity to work with the world's best violinists and orchestras and to contribute his prodigious talent and unique musical abilities to the artistic scene in the United States.

307. In addition, Mr. Hamami has paid thousands of dollars in attorneys' fees, filing fees, travel costs, and other costs associated with the visa application process, which he will be unable to recover.

CLASS ALLEGATIONS

308. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23 on behalf of themselves and all other persons similarly situated. A class action is proper because the class is so numerous that joinder of all members is impractical, this action involves questions of law and fact common to the class, Plaintiffs' claims are typical of the claims of the Class,

Plaintiffs will fairly and adequately protect the interests of the Class, and Defendants have acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the Class as a whole.

309. The Plaintiff Class includes two subclasses: (i) the "Family Member Class" and (ii) the "Visa Applicant Class." *See supra* at 5. The Plaintiffs representing the Family Members Class are Afrooz Kharazmi, Tanaz Toloubeydokhti, Dr. Najib Adi, Ismail Alghazali, Malik Almathil, Khalil Ali Nagi, Hezam Alarqaban, Abdurraouf Gseaa, Sudi Wardere, Khadija Aden, Ali Altuhaif, Soheil Vazehrad, Bamshad Azizi, Clyde Jean Tedrick II, Mitra Farnoodian-Tedrick, Maral Charkhtab Tabrizi, and Maryam Mozafari. The Plaintiffs representing the Visa Applicant Class are Afshan Alamshah Zadeh, Fathollah Tolou Beydokhti, Behnaz Malekghaeini, Aziz Altuhaif, Atefehossadat Motavaliabyazani, Roghayeh Azizikoutenaei, Hojjatollah Azizikoutenaei, Farajollah Farnoudian, Farangis Emami, Zahra Rouzbehani, Bahram Charkhtab Tabrizi, Mohammad Mehdi Mozaffary, Behnam Babalou, Hoda Mehrabi Abadi, Dr. Mahdi Afshar Arjmand, Dr. Ehsan Heidaryan, Najmeh Maharlouei, Nastaran Hajiheydari, and Mohamad Hamami.

310. The Class meets the requirements of Federal Rule of Civil Procedure 23(a)(1) because it is so numerous that joinder of all members is impracticable. The number of individuals who have been wrongly denied waivers or whose waiver applications are being stalled is not known with precision by Plaintiffs but is easily ascertainable by Defendants. On any given day, thousands of visa applications are adjudicated at embassies and consulates abroad. As such, more individuals will become class members in the future, as Defendants continue to deny applicants the opportunity to demonstrate their eligibility for waivers under the Proclamation. The members of the Class are ascertainable and identifiable by Defendants.

311. The Class meets the commonality requirements of Federal Rule of Civil Procedure 23(a)(2) because all Class members have been or will be subject to Defendants' common policy, pattern, and practice of failing to institute clear guidance, failing to provide an accessible and meaningful process by which individuals may seek consideration of their request for a waiver, and failing to provide individualized, case-by-case consideration for waivers under the Proclamation to all visa applicants, as required by the terms of the Proclamation. Plaintiffs and the Class share the same legal claims, which include, but are not limited to: whether Defendants' failure to consider all visa applicants for waivers, their failure to issue clear guidance, and their failure to provide an accessible, meaningful process by which individuals can seek to demonstrate their eligibility for a waiver violate the APA, the INA, and the Due Process Clause of the Fifth Amendment.

312. Similarly, the Class meets the typicality requirements of Federal Rule of Civil Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical of the claims of the Class as a whole. Plaintiffs, as with the Class they seek to represent, are all individuals who have been or will be denied the chance to request a waiver under the Proclamation and who have been or will be hindered from demonstrating their eligibility for a waiver because of Defendants' failure to provide clear guidance and an accessible process for submitting applications.

313. The adequacy requirements of Federal Rule of Civil Procedure 23(a)(4) are also met. Plaintiffs know of no conflict between their interests and those of the Class. Plaintiffs seek the same relief as other members of the Class, namely that the Court: (a) order Defendants to immediately cease their unlawful policy and/or practice of refusing to receive or consider requests for waivers under the Proclamation for all visa applicants; (b) retract visa denials issued before an orderly and meaningful process is put in place; (c) provide clear guidance that defines key words and sets well-defined standards for consular officers and applicants to use; (d) provide an orderly

process by which applicants may demonstrate their eligibility for a waiver; and (e) give full consideration for case-by-case waivers to all visa applicants as set forth in the Proclamation. In defending their own rights, the individual Plaintiffs will defend the rights of all Class members fairly and adequately. Plaintiffs are represented by counsel with deep knowledge of immigration law and civil rights law and with extensive experience litigating class actions and complex cases. Counsel have the requisite level of expertise to adequately prosecute this case on behalf of Plaintiffs and the Class.

314. The Class satisfies Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted on grounds generally applicable to the Class in refusing to fairly adjudicate waiver requests. Thus, final injunctive and declaratory relief is appropriate with respect to the Class as a whole.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Violation of Administrative Procedure Act)

315. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

316. The APA prohibits federal agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or is conducted "without observance of procedure required by law." 5 U.S.C. § 706(2)(A) and (D).

317. The APA further requires agencies to "proceed to conclude a matter presented" to the agency "within a reasonable time." 5 U.S.C. §§ 555(b) and 706(1).

318. Defendants have a non-discretionary duty under the Proclamation to develop standards to guide visa applicants in compiling their applications for waivers and for consular officers to reference in adjudicating waiver and visa applications. *See* Ex. A § 3(c).

319. Defendants have failed to promulgate such guidance and have nonetheless proceeded in denying or stalling waivers and visas. Defendants have also failed to follow existing procedures prescribed by the INA, implementing regulations, and the Foreign Affairs Manual in issuing these denials. In failing to develop or follow any procedures, Defendants have acted arbitrarily and capriciously and in contravention of the Proclamation, the INA, and the U.S. Constitution, and they have thus violated the APA.

320. Defendants have also failed to follow their own stated policy by failing to create an orderly process for waiver applications and by failing to consider all visa applicants for a waiver.

321. Defendants' violations of these laws have harmed and continue to harm Plaintiffs and proposed class members by indefinitely denying them access to their families and to economic and professional opportunities.

SECOND CLAIM FOR RELIEF
(Violation of Due Process Clause of the Fifth Amendment)

322. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

323. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving individuals of their fundamental rights without due process of law.

324. Plaintiffs' fundamental rights include their right to the "integrity of the family unit." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

325. The implementation of the waiver provision under the Proclamation directly and substantially infringes on Plaintiffs' fundamental rights.

326. The Due Process Clause forbids Defendants from infringing on Plaintiffs' fundamental rights unless the infringement is narrowly tailored to serve a compelling governmental interest.

327. As applied, the Proclamation's waivers provision fails this test. It is not narrowly tailored and it operates to block nearly all persons from banned countries from entry into the United States, regardless of whether they meet the criteria for a waiver grant.

328. The Due Process Clause of the Fifth Amendment also guarantees procedural due process rights, including the right to fair and impartial processes, and applies to foreign nationals. Those due process rights are implicated by the deprivation of a fundamental liberty interest, e.g., family integrity, and they may also arise from statute. *See Lanza v. Ashcroft*, 389 F.3d 917, 927 (9th Cir. 2004) ("The due process afforded aliens stems from those statutory rights granted by Congress and the principle that '[m]inimum due process rights attach to statutory rights.'") (alteration in original) (quoting *Dia v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003). The INA and its implementing regulations mandate various procedures for the processing of visas, procedures which Defendants have failed to follow.

329. The Due Process Clause of the Fifth Amendment of the U.S. Constitution further guarantees all individuals equal protection under the law.

330. The blanket denials of visas to applicants from banned countries without the opportunity to demonstrate their eligibility for a waiver from the Proclamation, together with statements made by Defendants concerning their intent and the application of the travel ban, makes clear that Defendants are targeting individuals for discriminatory treatment based on their country of origin or nationality, without any lawful justification.

331. Defendants' discriminatory implementation of the waivers provisions has no rational basis.

332. Defendants' conduct violates the Fifth Amendment's guarantee of equal protection.

333. In refusing to duly consider Plaintiffs' applications, Defendants have violated Plaintiffs' Fifth Amendment right to substantive and procedural due process and to equal protection under the law.

334. Defendants' violations of these laws have harmed and continue to harm Plaintiffs and proposed Class members by indefinitely denying them access to their families and to economic and research opportunities.

THIRD CLAIM FOR RELIEF
(Writ of Mandamus)

335. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

336. Defendants have a non-discretionary duty to develop guidance on the waiver process and to receive and fully and fairly adjudicate applicants' requests for waivers under the Proclamation. These non-discretionary duties arise under section 3 of the Proclamation and under the INA and its implementing regulations.

337. The APA requires agencies to "proceed to conclude a matter presented" to the agency "within a reasonable time." 5 U.S.C. § 555(b).

338. Defendants are unlawfully failing to accept waiver applications and to consider Plaintiffs' requests for waivers under the Proclamation and are thus failing to carry out the adjudicative and administrative functions delegated to them by law with regard to Plaintiffs' cases.

339. Defendants' refusal to receive and fully consider applicants' eligibility for waivers on a case-by-case basis and to develop meaningful guidance is arbitrary, capricious, and not in accordance with the law.

340. Defendants' issuance of blanket denials to visa applicants from banned countries without consideration of their individual circumstances violates Plaintiffs' Fifth Amendment rights to substantive and procedural due process and to equal protection under the law.

341. Because there are no other adequate remedies available to Plaintiffs, mandamus is appropriate. *See* 5 U.S.C. § 704.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Order Defendants to immediately retract all visa denials due to the Proclamation and notify applicants that they may apply for a waiver without submitting a new visa application, paying associated fees, and attending another interview;
2. Order Defendants to fulfill their duties under the Proclamation by providing clear and consistent guidelines for the waiver process, including definitions of key terms, standards for applicants to meet, examples of documents needed to meet those standards, and an orderly process through which applicants can apply for a waiver;
3. Order Defendants to abide by the terms of the Proclamation and consider all applicants' waiver applications on a case-by-case basis without discriminating based on applicants' country of origin or nationality;

4. Declare that Defendants' refusal to give full and fair consideration for waivers to all visa applicants from the banned countries violates the APA, the INA, and the Due Process Clause of the Fifth Amendment;
5. Award Plaintiffs costs of suit and reasonable attorney's fees under the Equal Access to Justice Act and any other applicable law; and
6. Grant such other and further relief as this Court deems equitable, just, and proper.

DATED: July 29, 2018
Washington, DC

Respectfully Submitted,

/s/Sirine Shebaya
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**Pro hac vice admission application forthcoming*
†Admission application forthcoming
‡ Not admitted to practice in DC; supervised by members of the DC bar

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Sirine Shebaya
Sirine Shebaya (*pro hac vice*)
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Farangis Emami, et al.

Plaintiffs,

-against-

KIRSTEN NIELSEN, in her official capacity as Secretary of Homeland Security, et al.

Defendants.

Civil Case No. 3:18-cv-01587

DECLARATION OF SIRINE SHEBAYA IN SUPPORT OF CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND FOR WRIT OF MANDAMUS

DECLARATION OF SIRINE SHEBAYA IN SUPPORT OF CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND FOR WRIT OF MANDAMUS

I, Sirine Shebaya, declare as follows:

1. I am admitted *pro hac vice* to practice law before this Court. I am an attorney at Muslim Advocates, and I represent Plaintiffs in the above-captioned action. I submit this declaration in support of Plaintiffs' Class Action Complaint for Injunctive and Declaratory Relief and for Writ of Mandamus. The following facts are within my personal knowledge and, if called and sworn as a witness, I would testify competently to these facts.

2. Attached hereto as Exhibit A is a true and correct copy of Presidential Proclamation 9645, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats." Presidential Proclamation 9645, 82 Fed. Reg. 45161 (Sept. 27, 2017).

3. Attached hereto as Exhibit B is a true and correct copy of a declaration submitted by former consular official Christopher Richardson, Esq. on June 1, 2018 in the case of *Alharbi v. Miller* in the U.S. District Court for the Eastern District of New York. Decl. of Christopher Richardson, Esq., *Alharbi v. Miller*, No. 1:18-cv-02435 (E.D.N.Y. filed April 25, 2018), ECF No. 24-2.

4. Attached hereto as Exhibit C is a true and correct copy of a Q&A posted on the U.S. Department of State website on December 4, 2017, entitled "New Court Order on Presidential Proclamation." A copy can be found at: https://web.archive.org/web/20180112164829/https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/2017-12-04-Presidential-Proclamation.html.

5. Attached hereto as Exhibit D is a true and correct copy of a declaration submitted by Jay Gairson, Esq., the founder and managing member of Gairson Law, LLC.

6. Attached hereto as Exhibit E is a true and correct copy of a letter from Mary K. Waters, Assistant Secretary of Legislative Affairs at U.S. Department of State, to U.S. Senator Chris Van Hollen, dated February 22, 2018. A copy of the letter can be found at: http://fingfx.thomsonreuters.com/gfx/reuterscom/1/60/60/letter.pdf.

7. Attached hereto as Exhibit F is a true and correct copy of revisions to Presidential Proclamation 9645 posted on the U.S. Department of State website on April 10, 2018, entitled "Revisions to Presidential Proclamation 9645." A copy can be found at: https://web.archive.org/web/20180413110706/https://travel.state.gov/content/travel/en/News/visas-news/revisions-to-presidential-proclamation-9645.html.

8. Attached hereto as Exhibit G is a true and correct copy of an email Attorney Shabnam Lotfi received from the U.S. Consulate General in Vancouver, Canada, on January 9, 2018.

9. Attached hereto as Exhibit H is a true and correct copy of email correspondence dated July 18, 2018 and July 19, 2018 between Attorney Parastoo Zahedi and the Consular Section of the U.S. Embassy in Abu Dhabi.

10. Attached hereto as Exhibit I is a true and correct copy of a U.S. Embassy form letter regarding a visa applicant's eligibility for a waiver under Presidential Proclamation 9645.

11. Attached hereto as Exhibit J is a true and correct copy of a second letter from Mary K. Waters, Assistant Secretary of Legislative Affairs at U.S. Department of State, to U.S. Senator Chris Van Hollen, dated June 22, 2018.

12. Attached hereto as Exhibit K is a true and correct copy of U.S. District Judge Brian M. Cogan's Findings of Fact and Conclusions of Law in the case of *Alharbi v. Miller* in the U.S. District Court for the Eastern District of New York. Findings of Fact and Conclusions of Law, *Alharbi v. Miller*, No. 1:18-cv-02435 (E.D.N.Y. filed April 25, 2018), ECF No. 20.

13. Attached hereto as Exhibit L is a true and correct copy of an email sent on January 4, 2018, by the U.S. Embassy in Yerevan, Armenia to Atefehossadat Motavaliabyazani.

14. Attached hereto as Exhibit M is a true and correct copy of an email sent on December 17, 2017, by the U.S. Embassy in Yerevan, Armenia, to Hoda Mehrabi Mohammad Abadi.

15. Attached hereto as Exhibit N is a true and correct copy of an email sent on December 27, 2018, by the U.S. Consulate General in Rio de Janeiro, Brazil, to Dr. Ehsan Heidaryan.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

DATED: July 29, 2018
Washington, DC

/s/ Sirine Shebaya

Sirine Shebaya (*pro hac vice*)
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Attorney for Plaintiffs

Exhibit A

Presidential Documents

Proclamation 9645 of September 24, 2017

Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats

By the President of the United States of America

A Proclamation

In Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), on the recommendations of the Secretary of Homeland Security and the Attorney General, I ordered a worldwide review of whether, and if so what, additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat. This was the first such review of its kind in United States history. As part of the review, the Secretary of Homeland Security established global requirements for information sharing in support of immigration screening and vetting. The Secretary of Homeland Security developed a comprehensive set of criteria and applied it to the information-sharing practices, policies, and capabilities of foreign governments. The Secretary of State thereafter engaged with the countries reviewed in an effort to address deficiencies and achieve improvements. In many instances, those efforts produced positive results. By obtaining additional information and formal commitments from foreign governments, the United States Government has improved its capacity and ability to assess whether foreign nationals attempting to enter the United States pose a security or safety threat. Our Nation is safer as a result of this work.

Despite those efforts, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, has determined that a small number of countries—out of nearly 200 evaluated—remain deficient at this time with respect to their identity-management and information-sharing capabilities, protocols, and practices. In some cases, these countries also have a significant terrorist presence within their territory.

As President, I must act to protect the security and interests of the United States and its people. I am committed to our ongoing efforts to engage those countries willing to cooperate, improve information-sharing and identity-management protocols and procedures, and address both terrorism-related and public-safety risks. Some of the countries with remaining inadequacies face significant challenges. Others have made strides to improve their protocols and procedures, and I commend them for these efforts. But until they satisfactorily address the identified inadequacies, I have determined, on the basis of recommendations from the Secretary of Homeland Security and other members of my Cabinet, to impose certain conditional restrictions and limitations, as set forth more fully below, on entry into the United States of nationals of the countries identified in section 2 of this proclamation.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that, absent the measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States of persons described in section 2 of this proclamation would be detrimental to the

interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Policy and Purpose.* (a) It is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats. Screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. They enhance our ability to detect foreign nationals who may commit, aid, or support acts of terrorism, or otherwise pose a safety threat, and they aid our efforts to prevent such individuals from entering the United States.

(b) Information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. Governments manage the identity and travel documents of their nationals and residents. They also control the circumstances under which they provide information about their nationals to other governments, including information about known or suspected terrorists and criminal-history information. It is, therefore, the policy of the United States to take all necessary and appropriate steps to encourage foreign governments to improve their information-sharing and identity-management protocols and practices and to regularly share identity and threat information with our immigration screening and vetting systems.

(c) Section 2(a) of Executive Order 13780 directed a ''worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat.'' That review culminated in a report submitted to the President by the Secretary of Homeland Security on July 9, 2017. In that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, developed a baseline for the kinds of information required from foreign governments to support the United States Government's ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat. That baseline incorporates three categories of criteria:

(i) *Identity-management information*. The United States expects foreign governments to provide the information needed to determine whether individuals seeking benefits under the immigration laws are who they claim to be. The identity-management information category focuses on the integrity of documents required for travel to the United States. The criteria assessed in this category include whether the country issues electronic passports embedded with data to enable confirmation of identity, reports lost and stolen passports to appropriate entities, and makes available upon request identity-related information not included in its passports.

(ii) *National security and public-safety information.* The United States expects foreign governments to provide information about whether persons who seek entry to this country pose national security or public-safety risks. The criteria assessed in this category include whether the country makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request, whether the country provides passport and national-identity document exemplars, and whether the country impedes the United States Government's receipt of information about passengers and crew traveling to the United States.

(iii) *National security and public-safety risk assessment.* The national security and public-safety risk assessment category focuses on national security risk indicators. The criteria assessed in this category include whether the country is a known or potential terrorist safe haven, whether it is

a participant in the Visa Waiver Program established under section 217 of the INA, 8 U.S.C. 1187, that meets all of its requirements, and whether it regularly fails to receive its nationals subject to final orders of removal from the United States.

(d) The Department of Homeland Security, in coordination with the Department of State, collected data on the performance of all foreign governments and assessed each country against the baseline described in subsection (c) of this section. The assessment focused, in particular, on identity management, security and public-safety threats, and national security risks. Through this assessment, the agencies measured each country's performance with respect to issuing reliable travel documents and implementing adequate identity-management and information-sharing protocols and procedures, and evaluated terrorism-related and public-safety risks associated with foreign nationals seeking entry into the United States from each country.

(e) The Department of Homeland Security evaluated each country against the baseline described in subsection (c) of this section. The Secretary of Homeland Security identified 16 countries as being ''inadequate'' based on an analysis of their identity-management protocols, information-sharing practices, and risk factors. Thirty-one additional countries were classified ''at risk'' of becoming ''inadequate'' based on those criteria.

(f) As required by section 2(d) of Executive Order 13780, the Department of State conducted a 50-day engagement period to encourage all foreign governments, not just the 47 identified as either ''inadequate'' or ''at risk,'' to improve their performance with respect to the baseline described in subsection (c) of this section. Those engagements yielded significant improvements in many countries. Twenty-nine countries, for example, provided travel document exemplars for use by Department of Homeland Security officials to combat fraud. Eleven countries agreed to share information on known or suspected terrorists.

(g) The Secretary of Homeland Security assesses that the following countries continue to have ''inadequate'' identity-management protocols, information-sharing practices, and risk factors, with respect to the baseline described in subsection (c) of this section, such that entry restrictions and limitations are recommended: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The Secretary of Homeland Security also assesses that Iraq did not meet the baseline, but that entry restrictions and limitations under a Presidential proclamation are not warranted. The Secretary of Homeland Security recommends, however, that nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States. In reaching these conclusions, the Secretary of Homeland Security considered the close cooperative relationship between the United States and the democratically elected government of Iraq, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combating the Islamic State of Iraq and Syria (ISIS).

(h) Section 2(e) of Executive Order 13780 directed the Secretary of Homeland Security to ''submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means.'' On September 15, 2017, the Secretary of Homeland Security submitted a report to me recommending entry restrictions and limitations on certain nationals of 7 countries determined to be ''inadequate'' in providing such information and in light of other factors discussed in the report. According to the report, the recommended restrictions would help address the threats that the countries' identity-management protocols, information-sharing inadequacies, and other risk factors pose to the security and welfare of the United

States. The restrictions also encourage the countries to work with the United States to address those inadequacies and risks so that the restrictions and limitations imposed by this proclamation may be relaxed or removed as soon as possible.

(i) In evaluating the recommendations of the Secretary of Homeland Security and in determining what restrictions to impose for each country, I consulted with appropriate Assistants to the President and members of the Cabinet, including the Secretaries of State, Defense, and Homeland Security, and the Attorney General. I considered several factors, including each country's capacity, ability, and willingness to cooperate with our identity-management and information-sharing policies and each country's risk factors, such as whether it has a significant terrorist presence within its territory. I also considered foreign policy, national security, and counterterrorism goals. I reviewed these factors and assessed these goals, with a particular focus on crafting those country-specific restrictions that would be most likely to encourage cooperation given each country's distinct circumstances, and that would, at the same time, protect the United States until such time as improvements occur. The restrictions and limitations imposed by this proclamation are, in my judgment, necessary to prevent the entry of those foreign nationals about whom the United States Government lacks sufficient information to assess the risks they pose to the United States. These restrictions and limitations are also needed to elicit improved identity-management and information-sharing protocols and practices from foreign governments; and to advance foreign policy, national security, and counterterrorism objectives.

(ii) After reviewing the Secretary of Homeland Security's report of September 15, 2017, and accounting for the foreign policy, national security, and counterterrorism objectives of the United States, I have determined to restrict and limit the entry of nationals of 7 countries found to be ''inadequate'' with respect to the baseline described in subsection (c) of this section: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. These restrictions distinguish between the entry of immigrants and nonimmigrants. Persons admitted on immigrant visas become lawful permanent residents of the United States. Such persons may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants. The United States affords lawful permanent residents more enduring rights than it does to nonimmigrants. Lawful permanent residents are more difficult to remove than nonimmigrants even after national security concerns arise, which heightens the costs and dangers of errors associated with admitting such individuals. And although immigrants generally receive more extensive vetting than nonimmigrants, such vetting is less reliable when the country from which someone seeks to emigrate exhibits significant gaps in its identity-management or information-sharing policies, or presents risks to the national security of the United States. For all but one of those 7 countries, therefore, I am restricting the entry of all immigrants.

(iii) I am adopting a more tailored approach with respect to nonimmigrants, in accordance with the recommendations of the Secretary of Homeland Security. For some countries found to be ''inadequate'' with respect to the baseline described in subsection (c) of this section, I am restricting the entry of all nonimmigrants. For countries with certain mitigating factors, such as a willingness to cooperate or play a substantial role in combatting terrorism, I am restricting the entry only of certain categories of nonimmigrants, which will mitigate the security threats presented by their entry into the United States. In those cases in which future cooperation seems reasonably likely, and accounting for foreign policy, national security, and counterterrorism objectives, I have tailored the restrictions to encourage such improvements.

(i) Section 2(e) of Executive Order 13780 also provided that the ''Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which

any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States.'' The Secretary of Homeland Security determined that Somalia generally satisfies the information-sharing requirements of the baseline described in subsection (c) of this section, but its government's inability to effectively and consistently cooperate, combined with the terrorist threat that emanates from its territory, present special circumstances that warrant restrictions and limitations on the entry of its nationals into the United States. Somalia's identity-management deficiencies and the significant terrorist presence within its territory make it a source of particular risks to the national security and public safety of the United States. Based on the considerations mentioned above, and as described further in section 2(h) of this proclamation, I have determined that entry restrictions, limitations, and other measures designed to ensure proper screening and vetting for nationals of Somalia are necessary for the security and welfare of the United States.

(j) Section 2 of this proclamation describes some of the inadequacies that led me to impose restrictions on the specified countries. Describing all of those reasons publicly, however, would cause serious damage to the national security of the United States, and many such descriptions are classified.

Sec. 2. *Suspension of Entry for Nationals of Countries of Identified Concern.* The entry into the United States of nationals of the following countries is hereby suspended and limited, as follows, subject to categorical exceptions and case-by-case waivers, as described in sections 3 and 6 of this proclamation:

(a) *Chad.*

(i) The government of Chad is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Chad has shown a clear willingness to improve in these areas. Nonetheless, Chad does not adequately share public-safety and terrorism-related information and fails to satisfy at least one key risk criterion. Additionally, several terrorist groups are active within Chad or in the surrounding region, including elements of Boko Haram, ISIS-West Africa, and al-Qa'ida in the Islamic Maghreb. At this time, additional information sharing to identify those foreign nationals applying for visas or seeking entry into the United States who represent national security and public-safety threats is necessary given the significant terrorism-related risk from this country.

(ii) The entry into the United States of nationals of Chad, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(b) *Iran.*

(i) Iran regularly fails to cooperate with the United States Government in identifying security risks, fails to satisfy at least one key risk criterion, is the source of significant terrorist threats, and fails to receive its nationals subject to final orders of removal from the United States. The Department of State has also designated Iran as a state sponsor of terrorism.

(ii) The entry into the United States of nationals of Iran as immigrants and as nonimmigrants is hereby suspended, except that entry by such nationals under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals should be subject to enhanced screening and vetting requirements.

(c) *Libya.*

(i) The government of Libya is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding on that cooperation, including in the areas of immigration and border management. Libya, nonetheless, faces significant challenges in sharing several types of information, including public-safety

and terrorism-related information necessary for the protection of the national security and public safety of the United States. Libya also has significant inadequacies in its identity-management protocols. Further, Libya fails to satisfy at least one key risk criterion and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. The substantial terrorist presence within Libya's territory amplifies the risks posed by the entry into the United States of its nationals.

(ii) The entry into the United States of nationals of Libya, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(d) *North Korea.*

(i) North Korea does not cooperate with the United States Government in any respect and fails to satisfy all information-sharing requirements.

(ii) The entry into the United States of nationals of North Korea as immigrants and nonimmigrants is hereby suspended.

(e) *Syria.*

(i) Syria regularly fails to cooperate with the United States Government in identifying security risks, is the source of significant terrorist threats, and has been designated by the Department of State as a state sponsor of terrorism. Syria has significant inadequacies in identity-management protocols, fails to share public-safety and terrorism information, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Syria as immigrants and nonimmigrants is hereby suspended.

(f) *Venezuela.*

(i) Venezuela has adopted many of the baseline standards identified by the Secretary of Homeland Security and in section 1 of this proclamation, but its government is uncooperative in verifying whether its citizens pose national security or public-safety threats. Venezuela's government fails to share public-safety and terrorism-related information adequately, fails to satisfy at least one key risk criterion, and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. There are, however, alternative sources for obtaining information to verify the citizenship and identity of nationals from Venezuela. As a result, the restrictions imposed by this proclamation focus on government officials of Venezuela who are responsible for the identified inadequacies.

(ii) Notwithstanding section 3(b)(v) of this proclamation, the entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures—including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations—and their immediate family members, as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended. Further, nationals of Venezuela who are visa holders should be subject to appropriate additional measures to ensure traveler information remains current.

(g) *Yemen.*

(i) The government of Yemen is an important and valuable counterterrorism partner, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Yemen, nonetheless, faces significant identity-management challenges, which are amplified by the notable terrorist presence within its territory. The government of Yemen fails to satisfy critical identity-management requirements, does not share public-safety and terrorism-related information adequately, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(h) *Somalia.*

(i) The Secretary of Homeland Security's report of September 15, 2017, determined that Somalia satisfies the information-sharing requirements of the baseline described in section 1(c) of this proclamation. But several other considerations support imposing entry restrictions and limitations on Somalia. Somalia has significant identity-management deficiencies. For example, while Somalia issues an electronic passport, the United States and many other countries do not recognize it. A persistent terrorist threat also emanates from Somalia's territory. The United States Government has identified Somalia as a terrorist safe haven. Somalia stands apart from other countries in the degree to which its government lacks command and control of its territory, which greatly limits the effectiveness of its national capabilities in a variety of respects. Terrorists use under-governed areas in northern, central, and southern Somalia as safe havens from which to plan, facilitate, and conduct their operations. Somalia also remains a destination for individuals attempting to join terrorist groups that threaten the national security of the United States. The State Department's 2016 Country Reports on Terrorism observed that Somalia has not sufficiently degraded the ability of terrorist groups to plan and mount attacks from its territory. Further, despite having made significant progress toward formally federating its member states, and its willingness to fight terrorism, Somalia continues to struggle to provide the governance needed to limit terrorists' freedom of movement, access to resources, and capacity to operate. The government of Somalia's lack of territorial control also compromises Somalia's ability, already limited because of poor record-keeping, to share information about its nationals who pose criminal or terrorist risks. As a result of these and other factors, Somalia presents special concerns that distinguish it from other countries.

(ii) The entry into the United States of nationals of Somalia as immigrants is hereby suspended. Additionally, visa adjudications for nationals of Somalia and decisions regarding their entry as nonimmigrants should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States.

Sec. 3. *Scope and Implementation of Suspensions and Limitations.* (a) *Scope.* Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspensions of and limitations on entry pursuant to section 2 of this proclamation shall apply only to foreign nationals of the designated countries who:

(i) are outside the United States on the applicable effective date under section 7 of this proclamation;

(ii) do not have a valid visa on the applicable effective date under section 7 of this proclamation; and

(iii) do not qualify for a visa or other valid travel document under section 6(d) of this proclamation.

(b) *Exceptions.* The suspension of entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any foreign national who is admitted to or paroled into the United States on or after the applicable effective date under section 7 of this proclamation;

(iii) any foreign national who has a document other than a visa—such as a transportation letter, an appropriate boarding foil, or an advance parole document—valid on the applicable effective date under section 7 of this proclamation or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission;

(iv) any dual national of a country designated under section 2 of this proclamation when the individual is traveling on a passport issued by a non-designated country;

(v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C–2 visa for travel to the United Nations, or G–1, G–2, G–3, or G–4 visa; or

(vi) any foreign national who has been granted asylum by the United States; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

(c) *Waivers.* Notwithstanding the suspensions of and limitations on entry set forth in section 2 of this proclamation, a consular officer, or the Commissioner, United States Customs and Border Protection (CBP), or the Commissioner's designee, as appropriate, may, in their discretion, grant waivers on a case-by-case basis to permit the entry of foreign nationals for whom entry is otherwise suspended or limited if such foreign nationals demonstrate that waivers would be appropriate and consistent with subsections (i) through (iv) of this subsection. The Secretary of State and the Secretary of Homeland Security shall coordinate to adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants.

(i) A waiver may be granted only if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

(A) denying entry would cause the foreign national undue hardship;

(B) entry would not pose a threat to the national security or public safety of the United States; and

(C) entry would be in the national interest.

(ii) The guidance issued by the Secretary of State and the Secretary of Homeland Security under this subsection shall address the standards, policies, and procedures for:

(A) determining whether the entry of a foreign national would not pose a threat to the national security or public safety of the United States;

(B) determining whether the entry of a foreign national would be in the national interest;

(C) addressing and managing the risks of making such a determination in light of the inadequacies in information sharing, identity management, and other potential dangers posed by the nationals of individual countries subject to the restrictions and limitations imposed by this proclamation;

(D) assessing whether the United States has access, at the time of the waiver determination, to sufficient information about the foreign national to determine whether entry would satisfy the requirements of subsection (i) of this subsection; and

(E) determining the special circumstances that would justify granting a waiver under subsection (iv)(E) of this subsection.

(iii) Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa adjudication process will be effective both for the issuance of a visa and for any subsequent entry on that visa, but will leave unchanged all other requirements for admission or entry.

(iv) Case-by-case waivers may not be granted categorically, but may be appropriate, subject to the limitations, conditions, and requirements set forth under subsection (i) of this subsection and the guidance issued under subsection (ii) of this subsection, in individual circumstances such as the following:

(A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date under section 7 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;

(B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date under section 7 of this proclamation for work, study, or other lawful activity;

(C) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;

(D) the foreign national seeks to enter the United States to visit or reside with a close family member (*e.g.,* a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;

(E) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(F) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee), and the foreign national can document that he or she has provided faithful and valuable service to the United States Government;

(G) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.,* traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(H) the foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;

(I) the foreign national is traveling as a United States Government–sponsored exchange visitor; or

(J) the foreign national is traveling to the United States, at the request of a United States Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

Sec. 4. *Adjustments to and Removal of Suspensions and Limitations.* (a) The Secretary of Homeland Security shall, in consultation with the Secretary of State, devise a process to assess whether any suspensions and limitations imposed by section 2 of this proclamation should be continued, terminated, modified, or supplemented. The process shall account for whether countries have improved their identity-management and information-sharing protocols and procedures based on the criteria set forth in section 1 of this proclamation and the Secretary of Homeland Security's report of September 15, 2017. Within 180 days of the date of this proclamation, and every 180 days thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies, shall submit a report with recommendations to the President, through appropriate Assistants to the President, regarding the following:

(i) the interests of the United States, if any, that continue to require the suspension of, or limitations on, the entry on certain classes of nationals of countries identified in section 2 of this proclamation and whether the restrictions and limitations imposed by section 2 of this proclamation should be continued, modified, terminated, or supplemented; and

(ii) the interests of the United States, if any, that require the suspension of, or limitations on, the entry of certain classes of nationals of countries not identified in this proclamation.

(b) The Secretary of State, in consultation with the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, the Director of National Intelligence, and the head of any other executive department or agency (agency) that the Secretary of State deems appropriate, shall engage the countries listed in section 2 of this proclamation, and any other countries that have information-sharing, identity-management, or risk-factor deficiencies as practicable, appropriate, and consistent with the foreign policy, national security, and public-safety objectives of the United States.

(c) Notwithstanding the process described above, and consistent with the process described in section 2(f) of Executive Order 13780, if the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, and the Director of National Intelligence, determines, at any time, that a country meets the standards of the baseline described in section 1(c) of this proclamation, that a country has an adequate plan to provide such information, or that one or more of the restrictions or limitations imposed on the entry of a country's nationals are no longer necessary for the security or welfare of the United States, the Secretary of Homeland Security may recommend to the President the removal or modification of any or all such restrictions and limitations. The Secretary of Homeland Security, the Secretary of State, or the Attorney General may also, as provided for in Executive Order 13780, submit to the President the names of additional countries for which any of them recommends any lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

Sec. 5. *Reports on Screening and Vetting Procedures.* (a) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies shall submit periodic reports to the President, through appropriate Assistants to the President, that:

(i) describe the steps the United States Government has taken to improve vetting for nationals of all foreign countries, including through improved collection of biometric and biographic data;

(ii) describe the scope and magnitude of fraud, errors, false information, and unverifiable claims, as determined by the Secretary of Homeland Security on the basis of a validation study, made in applications for immigration benefits under the immigration laws; and

(iii) evaluate the procedures related to screening and vetting established by the Department of State's Bureau of Consular Affairs in order to enhance the safety and security of the United States and to ensure sufficient review of applications for immigration benefits.

(b) The initial report required under subsection (a) of this section shall be submitted within 180 days of the date of this proclamation; the second report shall be submitted within 270 days of the first report; and reports shall be submitted annually thereafter.

(c) The agency heads identified in subsection (a) of this section shall coordinate any policy developments associated with the reports described in subsection (a) of this section through the appropriate Assistants to the President.

Sec. 6. *Enforcement.* (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and organizations, to ensure efficient, effective, and appropriate implementation of this proclamation.

(b) In implementing this proclamation, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including those that provide an opportunity for individuals to enter the United States on the basis of a credible claim of fear of persecution or torture.

(c) No immigrant or nonimmigrant visa issued before the applicable effective date under section 7 of this proclamation shall be revoked pursuant to this proclamation.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 of January 27, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry under the terms and conditions of the visa marked revoked or marked canceled. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

(e) This proclamation shall not apply to an individual who has been granted asylum by the United States, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture. Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 7. *Effective Dates.* Executive Order 13780 ordered a temporary pause on the entry of foreign nationals from certain foreign countries. In two cases, however, Federal courts have enjoined those restrictions. The Supreme Court has stayed those injunctions as to foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States, pending its review of the decisions of the lower courts.

(a) The restrictions and limitations established in section 2 of this proclamation are effective at 3:30 p.m. eastern daylight time on September 24, 2017, for foreign nationals who:

(i) were subject to entry restrictions under section 2 of Executive Order 13780, or would have been subject to the restrictions but for section 3 of that Executive Order, and

(ii) lack a credible claim of a bona fide relationship with a person or entity in the United States.

(b) The restrictions and limitations established in section 2 of this proclamation are effective at 12:01 a.m. eastern daylight time on October 18, 2017, for all other persons subject to this proclamation, including nationals of:

(i) Iran, Libya, Syria, Yemen, and Somalia who have a credible claim of a bona fide relationship with a person or entity in the United States; and

(ii) Chad, North Korea, and Venezuela.

Sec. 8. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the national security, foreign policy, and counterterrorism interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.

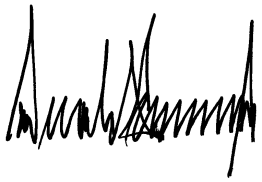

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Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALHARBI, AHMED et al., *Plaintiffs*, v. MILLER, STEPHEN et al. *Defendants*.	Case No.: 18-cv-2435(BMC) **DECLARATION OF CHRISTOPHER RICHARDSON, ESQ.**

DECLARATION OF CHISTOPHER RICHARDSON, ESQ.

I, Christopher Richardson, Esq., do hereby declare:

1) I am a licensed attorney admitted to practice in the state of GEORGIA. Furthermore, I am a member in good standing of the bar of 643543.

2) I am over 18 years of age and if called upon to testify, I could and would competently testify to the following facts, as the same are personally known to me.

3) From 2011 to 2018, I was employed by the U.S. State of Department. My last post before resigning was at the U.S. Embassy in Madrid located at Calle de Serrano, 75 28006 Madrid, Spain and my title was American Citizens Services Chief.

4) My last day of employment was March 1, 2018. Therefore, I was employed when Executive Order 13769 and 13780 and also Presidential Proclamation 98645 were issued. I was also employed and had access to all the state department guidance, cables, sample Q's and A's and instructions regarding executing all three orders and had the opportunity to review all

those materials.

5) All of the above guidance cables, sample Q's and A's and instructions regarding executing all three orders were sent via email to consular posts, and the cable and corresponding Q's and A's were at the top center of the CAs internal homepage for 3 to 4 months.

6) I have had the opportunity to read from pages 53 and 68 of the transcript dated Thursday, May 10, 2018 from the above caption case. Specifically, I read where Mr. Amanat stated "There's no Q & A." ... "This is the first time I am hearing about that." "Certainly, there's no reference to any such document in the documents themselves that I'm giving to your honor.

7) Those statements are inaccurate. First, there was not only one version of the Q's & A's but two, one redlined as Ms. Goldberg correctly identified. Moreover, this was common knowledge in the department and several federal agencies have access to Consular information.

8) Secondly, the Q's & A's was part of the cable and was definitely referenced in the cable itself as is with all Q's & A's.

9) On page 68 I also read where the Court is inquiring about the cable "referencing several other" documents. Mr. Amanat states that the document is "classified" and there is one with "unclassified excerpts." Having seen all these documents to the best of my recollection NONE of the documents were classified.

10) I can certainly understand why the government would not want release all of them because when read together with our training, it is understood that there really is no waiver and the Supreme Court was correct to point out that the waiver is merely "window dressing."

11) As a Consular officer previously employed by the State Department my impression and interpretation of how we as officers were to apply the waiver process was as follows:

(a) They gave us a list of things and we would go down the list one by one until we were able to determine at all possible cost that the person was not eligible to even apply for the waiver. My understanding was no one is to be eligible to apply.

(b) If for some reason an applicant made it through the list and we had no choice but to determine we could find an applicant eligible to apply, regardless of the PP instructions that we had "discretion to grant the waiver," we were not allowed to exercise that discretion. We were mandated to send notice to Washington that we found this applicant eligible to apply and Washington would then make the decision to grant or deny the waiver.

12) In essence what the administration was doing was "hiding" behind the doctrine of consular non-reviewability for the benefit of issuing a Muslim ban and the same time usurping all of our authority given by both Congress and the PP by disallowing the consular officer to make a decision.

13) Approval notices like the samples attached to my declaration (Ecuador, Mexico, Djibouti, Turkey) are issued at US Embassies all over the world once a case is complete, (valid medicals received, applicant interviewed, and SAOs clearances received) while the applicant is waiting for the embassy to print the visa. This is not specific to Djibouti.

14) Even when SAOs clearance expire and needs to be updated, it can be done within 24-72 hours and the visa printed, since it is merely an update. The same hold true for the medical examination.

15) I declare under penalty of perjury of the law of New York and the United States that the foregoing is true and correct.

Dated on this June 1, 2018

Christopher Richardson, Esq.

Exhibit C

December 4, 2017 - New Court Order on Presidential Proclamation

On December 4, 2017, the U.S. Supreme Court granted the government's motions for emergency stays of preliminary injunctions issued by U.S. District Courts in the Districts of Hawaii and Maryland. The preliminary injunctions had prohibited the government from fully enforcing or implementing the entry restrictions of Presidential Proclamation 9645 (P.P.) titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats" to nationals of six countries: Chad, Iran, Libya, Syria, Yemen, and Somalia. Per the Supreme Court's orders, those restrictions will be implemented fully, in accordance with the Presidential Proclamation, around the world, beginning December 8 at open of business, local time.

The District Court injunctions did not affect implementation of entry restrictions against nationals from North Korea and Venezuela. Those individuals remain subject to the restrictions and limitations listed in the Presidential Proclamation, which went into effect at 12:01 a.m. eastern time on Wednesday, October 18, 2017, with respect to nationals of those countries.

Additional Background: The President issued Presidential Proclamation 9645 on September 24, 2017. Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were determined to be "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing

information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

Nationals of the eight countries are subject to various travel restrictions contained in the Proclamation, as outlined in the following table, subject to exceptions and waivers set forth in the Proclamation.

Country	**Nonimmigrant Visas**	**Immigrant and Diversity Visas**
Chad	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
Iran	No nonimmigrant visas except F, M, and J visas	No immigrant or diversity visas
Libya	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
North Korea	No nonimmigrant visas	No immigrant or diversity visas
Somalia		No immigrant or diversity visas
Syria	No nonimmigrant visas	No immigrant or diversity visas
Venezuela	No B-1, B-2 or B-1/B-2 visas of any kind for officials of the following government agencies Ministry of Interior, Justice, and Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People's Power Ministry of Foreign Affairs, and their immediate family members.	
Yemen	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas

We will not cancel previously scheduled visa application appointments. In accordance with the Presidential Proclamation, for nationals of the eight designated countries, a consular officer will make a determination whether an applicant otherwise eligible for a visa is exempt from the Proclamation or, if not, may be eligible for a waiver under the Proclamation and therefore issued a visa.

No visas will be revoked pursuant to the Proclamation. Individuals subject to the Proclamation who possess a valid visa or valid travel document generally will be permitted to travel to the United States, irrespective of when the visa was issued.

We will keep those traveling to the United States and our partners in the travel industry informed as we implement the order in a professional, organized, and timely way.

FAQs on the Presidential Proclamation - Department of Homeland Security

The President's Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats

Frequently Asked Questions

What are the exceptions in the Proclamation?

The following exceptions apply to nationals from all eight countries and will not be subject to any travel restrictions listed in the Proclamation:

a) Any national who was in the United States on the applicable effective date described in Section 7 of the Proclamation for that national, regardless of immigration status;

b) Any national who had a valid visa on the applicable effective date in Section 7 of the Proclamation for that national;

c) Any national who qualifies for a visa or other valid travel document under section 6(d) of the Proclamation;

d) Any lawful permanent resident (LPR) of the United States;

e) Any national who is admitted to or paroled into the United States on or after the applicable effective date in Section 7 of the Proclamation for that national;

f) Any applicant who has a document other than a visa, valid on the applicable effective date in Section 7 of the Proclamation for that applicant or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;

g) Any dual national of a country designated under the Proclamation when traveling on a passport issued by a non-designated country;

h) Any applicant traveling on a diplomatic (A-1 or A-2) or diplomatic-type visa (of any classification), NATO-1 -6 visas, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; except certain Venezuelan government officials and their family members traveling on a diplomatic-type B-1, B-2, or B1/B2 visas

i) Any applicant who has been granted asylum; admitted to the United States as a refugee; or has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Exceptions and waivers listed in the Proclamation are applicable for qualified applicants. In all visa adjudications, consular officers may seek additional information, as warranted, to determine whether an exception or a waiver is available.

If a principal visa applicant qualifies for an exception or a waiver under the Proclamation, does a derivative also get the benefit of the exception or waiver?

Each applicant, who is otherwise eligible, can only benefit from an exception or a waiver if he or she individually meets the conditions of the exception or waiver.

Does the Proclamation apply to dual nationals?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country.

Our embassies and consulates around the world will process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants who apply with a passport from a non-designated country, even if they hold dual nationality from one of the eight restricted countries.

Does this apply to U.S. Lawful Permanent Residents?

No. As stated in the Proclamation, lawful permanent residents of the United States are not affected by the Proclamation

Are there special rules for permanent residents of Canada?

Waivers may not be granted categorically to any group of nationals of the eight countries who are subject to visa restrictions pursuant to the Proclamation, but waivers may be appropriate in individual circumstances, on a case-by-case basis. The Proclamation lists several circumstances in which case-by-case waivers may be appropriate. That list includes foreign nationals who are Canadian permanent residents who apply for visas at a U.S. consular section in Canada. Canadian permanent residents should bring proof of their status to a consular officer.

A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation during each phase of the implementation and, if so, whether the applicant qualifies for an exception or a waiver.

Will you process waivers for those affected by the Proclamation? How do I qualify for a waiver to be issued a visa?

As specified in the Proclamation, consular officers may issue a visa based on a listed waiver category to nationals of countries identified in the PP on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security or public safety threat to the United States, and denial of the visa would cause undue hardship. There is no separate application for a waiver. An individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver.

What is a "close family member" for the purposes of determining if someone is eligible for a waiver?

Section 201(b) of the INA provides a definition of immediate relative, which is used to interpret the term "close family member" as used in the waiver category. This limits the relationship to spouses, children under the age of 21, and parents. While the INA definition includes only children, spouses, and parents of a U.S. citizen, in the context of the Presidential Proclamation it also includes these relationships

with LPRs and aliens lawfully admitted on a valid nonimmigrant visa in addition to U.S. citizens.

Can those needing urgent medical care in the United States still qualify for a visa?

Applicants who are otherwise qualified and seeking urgent medical care in the United States may be eligible for an exception or a waiver. Any individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might qualify the individual for an exception or waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation, and if so, whether the case qualifies for an exception or a waiver.

The Proclamation provides several examples of categories of cases that may be appropriate for consideration for a waiver, on a case-by-case basis, when in the national interest, when entry would not threaten national security or public safety, and denial would cause undue hardship. Among the examples provided, a foreign national who seeks to enter the United States for urgent medical care may be considered for a waiver.

I'm a student or short-term employee that was temporarily outside of the United States when the Proclamation went into effect. Can I return to school/work?

If you have a valid, unexpired visa and are outside the United States, you can return to school or work per the exception noted in the Proclamation.

If you do not have a valid, unexpired visa and do not qualify for an exception you will need to qualify for the visa and a waiver. An individual who wishes to apply for a nonimmigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for a waiver.

I received my immigrant visa but I haven't yet entered the United States. Can I still travel there using my immigrant visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals

of affected countries who have valid visas on the date it becomes effective.

I recently had my immigrant visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, you should proceed to submit your documentation. After receiving any required missing documentation or completion of any administrative processing, the U.S. embassy or consulate where you were interviewed will contact you with more information.

I am currently working on my case with NVC. Can I continue?

Yes. You should continue to pay fees, complete your Form DS-260 immigrant visa applications, and submit your financial and civil supporting documents to NVC. NVC will continue reviewing cases and scheduling visa interviews overseas. During the interview, a consular officer will carefully review the case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or may qualify for a waiver.

What immigrant visa classes are subject to the Proclamation?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Proclamation and restricted. All immigrant visa classifications for nationals of Venezuela are unrestricted. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or a waiver.

I sponsored my family member for an immigrant visa, and his interview appointment is after the effective date of the Proclamation. Will he still be able to receive a visa?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Presidential Proclamation and suspended. An individual who wishes to apply for an immigrant visa should apply for a

visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the applicant qualifies for an exception or a waiver.

I am applying for a K (fiancé) visa. My approved I-129 petition is only valid for four months. Can you expedite my case?

The National Visa Center already expedites all Form I-129F petitions to embassies and consulates overseas. Upon receipt of the petition and case file, the embassy or consulate will contact you with instructions on scheduling your interview appointment.

I received my Diversity Visa but I haven't yet entered the United States. Can I still travel there using my Diversity Visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

I recently had my Diversity Visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, please provide the requested information. The U.S. embassy or consulate where you were interviewed will contact you with more information.

Will my case move to the back of the line for an appointment?

No. KCC schedules appointments by Lottery Rank Number. When KCC is able to schedule your visa interview, you will receive an appointment before cases with higher Lottery Rank Numbers.

I am currently working on my case with KCC. Can I continue?

Yes. You should continue to complete your Form DS-260 immigrant visa application. KCC will continue reviewing

cases and can qualify your case for an appointment. You will be notified about the scheduling of a visa interview.

What if my spouse or child is a national of one of the countries listed, but I am not?

KCC will continue to schedule new DV interview appointments for nationals of the affected countries. A national of any of those countries applying as a principal or derivative DV applicant should disclose during the visa interview any information that might qualify the individual for a waiver/exception. Note that DV 2018 visas, including derivative visas, can only be issued during the program year, which ends September 30, 2018, and only if visa numbers remain available. There is no guarantee a visa will be available in the future for your derivative spouse or child.

What if I am a dual national or permanent resident of Canada?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country. You may apply for a DV using the passport of a non-designated country even if you selected the nationality of a designated country when you entered the lottery. Also, permanent residents of Canada applying for DVs in Montreal may be eligible for a waiver per the Proclamation, but will be considered on a case-by-case basis. If you believe one of these exceptions, or a waiver included in the Proclamation, applies to you and your otherwise current DV case has not been scheduled for interview, contact the U.S. embassy or consulate where your interview will take place/KCC at KCCDV@state.gov.

Does this Proclamation affect follow-to-join asylees?

The Proclamation does not affect V92 applicants, follow-to-join asylees.

Exhibit D

DECLARATION OF JAY GAIRSON

Pursuant to 28 U.S.C. § 1746, I declare the following to be true and correct under penalty of perjury:

1. I am the founder and managing member of Gairson Law, LLC. I practice immigration law with a focus on fraud and national security issues. My practice consists of both normal family and business cases that do not have any problems and cases that involve complicated fraud and national security issues. I have been an attorney practicing in this area of immigration law since January 5, 2011. Prior to becoming an attorney, I had worked since August 2006 at an immigration law firm as a paralegal.
2. Due to the focus of my practice, my clients are predominantly from Somalia, Ethiopia, Eritrea, Iran, Yemen, Pakistan, Syria, Libya, with the remainder mostly coming from or having visited countries with significant Muslim populations in the Middle East, South Asia, and Africa.
3. I am a frequent presenter at conferences, know your rights presentations, and podcasts and have spoken on issues ranging from Terrorism Related Inadmissibility Grounds (TRIG) under INA § 212(a)(3)(B), the Controlled Application Review and Resolution Program (CARRP), the Freedom of Information Act and Privacy Act, consular processing, administrative processing, the travel ban under INA § 212(f) including Presidential Proclamation 9645, law enforcement agencies and investigations, and other issues including immigration fraud and national security hot topics. My most recent presentation was a podcast for the American Immigration Lawyers Association titled "Advising Clients Impacted by Travel Ban 3.0".

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4. I am a regular participant on multiple immigration lawyer listservs that regularly discuss consular processing, the travel ban, and numerous other immigration issues. Using these listservs I am able to monitor larger trends in immigration processing based on the questions asked and discussions held by other lawyers, beyond the data available through my own immigration cases.

5. I have directly, by entering an appearance and communicating directly with U.S. embassies and consulates, and indirectly, by advising clients and reviewing the materials that they intended to send the embassy, represented over a hundred immigrants and non-immigrants impacted by the current implementation of the travel ban under Presidential Proclamation 9645 since December 4, 2017.

6. Based on my experience, review of the materials, and observation of trends, I advise other attorneys and my clients on how to request Presidential Proclamation 9645 § 3(c) waivers or to argue that the Proclamation does not apply to an individual case.

7. It is my considered opinion that P.P. 9645 has been haphazardly implemented by the Department of State and its consulates and embassies. Based on the inconsistent trends in P.P. 9645's implementation, it is clear that DOS has not issued consistent guidance to its consular officers or visa units and it has not provided sufficient resources for its officers and visa units to handle the additional work created. Furthermore, insufficient guidance with regards to P.P. 9645 has been made available to the public, resulting in a hodgepodge of conflicting techniques and conflicting opinions and an increase in scams guaranteeing travel ban waivers for exorbitant and unnecessary fees.

8. DOS has not publicly adopted, as required by P.P. 9645 § 3(c) substantive "guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants."

9. Prior to the Department of State's letter to Senator Chris Van Hollen on February 22, 2018, no definition of the terms "undue hardship", "national interest", or "national security or public safety" had been publicly provided.

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10. DOS has not publicly promulgated procedures for requesting or applying for a waiver to P.P. 9645. As a result the majority of U.S. embassies and consulates refuse to accept documentation from visa applicants supporting and requesting a P.P. 9645 § 3(c) waiver. In order to compensate for the lack of guidance, immigration lawyers have had to resort to a variety of techniques to ensure that documents supporting their client's case are entered into the record. These techniques include submitting waiver packets with the initial petition, submitting waiver documents to the National Visa Center, emailing waiver documents to the U.S. embassies and consulates, encouraging clients to attempt to submit documents in person, and mailing unsolicited documents to U.S. embassies and consulates requesting that a waiver be considered.

11. Despite the lack of a formal method to apply for or request a waiver, according to DOS in its letter to Senator Hollen, "Consular officers may grant waivers on a case-by-case basis *when the applicant demonstrates* to the officer's satisfaction that he or she meets the three criteria [for a waiver]." However, without being able to submit documents and legal analysis supporting a demonstration that the applicant meets the three criteria for a waiver, there is no way that an individual applicant could demonstrate to an officer's satisfaction that he or she qualifies for a waiver in a three to five minute visa interview.

12. To complicate matters further, since the Supreme Court decision on June 26, 2018, the consular officers at the U.S. Embassies in Abu Dhabi and Djibouti have been explicitly informing visa applicants that they will not accept packets requesting a waiver as it is their job to put together the waiver application and they do not need supporting documents to make their determination. For example, on July 19 the U.S. Embassy in Abu Dhabi wrote the following to a colleague of mine, "There is no role or requirement for legal services to facilitate the waiver process, which the Embassy initiated as soon as the applicant was interviewed. Please note – and inform your client – that only U.S. government officials can author waiver requests."

13. Due to the DOS policy of not accepting waiver requests and supporting documents from the visa applicant or attorney, it is virtually impossible for a consular officer to adequately

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evaluate the waiver factors for each case. For visa applications based upon petitions filed with USCIS, the primary focus of evidence submitted throughout the case is to prove that a bona fide employment opportunity exists or a bona fide family relationship exists. For visa applications without a petition, the primary focus is of evidence submitted is to prove that the individual is not inadmissible to the United States and satisfies the basic criteria for the visa classification sought. Furthermore, the waiver processes defined in regulation for the various inadmissibility grounds are largely based upon hardship to a U.S. person and not on the visa applicant. The P.P. 9645 § 3(c) factors turn the existing waiver guidelines around and look at evidentiary factors beyond those in a standard visa petition or application. While the bona fide nature of a relationship or employment opportunity may be a part of the waiver factor evaluation, it is unlikely to adequately describe the full extent of the undue hardship or national interest. Furthermore, the only document most immigrant visa applicants, and few non-immigrant visa applicants, submit in support of satisfying national security and public safety review are a standard police certificate from any country they have lived in for more than six months. Fundamentally the documents necessary for normal visa processing are insufficient to always and consistently show whether a visa applicant satisfies the waiver criteria.

14. Consular officers are able to quickly find that a visa applicant does not qualify for a P.P. 9645 waiver, because the necessary documentation to support a waiver has not historically been a required portion of the visa application. As a result, by not accepting documents and legal analysis relevant to the P.P. 9645 waiver factors, the consular officer has an excuse to not carry out the excessively burdensome security screening process. Alternatively, consular officers are tacitly acknowledging that the waiver process is a fraud and documentary evidence is not necessary to satisfy the undue hardship and national interest factors or they are avoiding busy work because virtually no applicant can pass the national security and public safety screening.

15. In addition to the lack of publicly available procedures to acquire a waiver to Proclamation 9645, DOS does not appear to have adequately trained its consular officers as to its scope or

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exceptions. As a result, visa applicants that are stateless or dual nationals consistently find themselves being considered for a waiver and individuals in the U.S. fear leaving in the event a consular officer may fail to apply a valid exception or an overbroad definition of the scope to the individual and thereby constructively deny them a visa to return.

16. The P.P. 9645 § 3(c) terms of art "undue hardship", "national interest", and "national security or public safety" are not defined within the proclamation and have not been adequately defined by DOS. As a result, there is little guidance on how a visa applicant could satisfy these requirements in order to obtain a waiver. The only guidance that has been made available was not to the public, but instead to Congress in the DOS letter sent to Senator Hollen, where the terms of art were given more slightly more definition.

17. Prior to the Department of State's letter to Senator Chris Van Hollen on February 22, 2018, no definition of the terms "undue hardship", "national interest", or "national security or public safety" had been publicly provided.

18. In its letter to Senator Hollen, DOS described "undue hardship" as "an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans would defeat the purpose of travel". However, this definition of undue hardship is higher than and inconsistent with the standard defined in *In re E-L-H*, as it requires an element of novelty in the hardship being "an unusual situation". DOS has not provided any other guidance on how "undue hardship" is defined or what it may look like.

19. The "undue hardship" standard as defined by DOS to Senator Hollen is inconsistent with the examples provided in P.P. 9645 § 3(c)(iv). The examples do not require the existence of "an unusual situation", but instead describe multiple scenarios that are relatively common but distinctly fit within the legal definition of undue hardship. For example, (A) covers visa applicants with long-term or continuous presence in the U.S. dedicated to an activity that would be impaired should a visa not be granted, (B) covers all categories of significant contacts within the U.S. (e.g., family, business, investment, and other possibilities), (C) includes individuals pursuing significant professional or business obligations that would be impaired if a visa was not granted, (D) includes situations where failure to grant a visa would

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cause undue hardship to a close family relationship, which inherently includes bona fide relationships classically necessary for a family-based petition, (E) covers the young, those with medical need, adoptees, and the elderly, and the remainder cover government related situations. None of these necessarily meets the novelty inherent in describing something as an "unusual situation". Nonetheless, DOS has set the "undue hardship" standard higher than that described in the Proclamation itself and within the existing body of law for that term.

20. As a result of DOS's overly burdensome definition for "undue hardship" and based on my experience, U.S. Embassies and Consulates are inconsistently applying the term:

a. Until March 2018, the U.S. Embassy in Djibouti systematically informed visa applicants and their lawyers that a travel ban waiver would only be considered when there was a showing of "extreme hardship". Recently the Embassy has started reconsidering cases it had previously denied, but it has not provided any guidance as to how it is defining "undue hardship".

b. The U.S. Embassy in Abu Dhabi, U.A.E., systematically refuses to respond to immigration attorneys and visa applicants unless it initiates the conversation. Based upon its issuance of questions similar to those on DOS Form DS-5535, it appears that the Embassy is utilizing the more familiar "extreme hardship" standard for its hardship analysis.

c. The U.S. Embassy in Ankara, Turkey, appears to have implemented a slightly more lenient standard than "extreme hardship", but has trended toward only referring cases for waiver review when the hardship is family based rather than related to an individual's education, economic, or employment needs. However, its implementation of "undue hardship" still appears to be greater than the prevailing legal definition of the term based upon its existing use within immigration and administrative law.

d. The U.S. Embassies in Addis Ababa, Ethiopia and Nairobi, Kenya, appear to have implemented a standard for "undue hardship" consistent with the legal definition of "preventing [the applicant] from maintaining ties to close family members." *In re E-L-H*, 23 I&N Dec. 700, 703-4 (B.I.A. 2004) (Opinion written by AG Janet Reno). However,

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these embassies appear to largely disregard undue hardship based upon an adverse impact to an individual's education, economic livelihood, or employment. Furthermore, these embassies unnecessarily restrict the definition of "close family members" to unmarried children under 21 and spouses.

21. Prior to and after the letter to Senator Hollen, DOS has not provided any guidance on what it means for travel to the U.S. to be in the "national interest". In its letter to Senator Hollen, DOS write that "the applicant's travel may be considered in the national interest if the applicant demonstrates to the consular officer's satisfaction that a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted."

22. The DOS letter to Senator Hollen sets out a national interest standard prefaced upon harm to U.S. persons, including entities. However, in application at U.S. embassies and consulates the national interest standard has largely been applied as equivalent to extreme hardship. For example, consular officers regularly find that there is no hardship suffered when siblings are not allowed to visit each other in the U.S., when refugees cannot bring their loved ones to the U.S., or when regional centers and EB-5 qualifying businesses cannot receive local input from their investors. As a result, the standard is being inconsistently implemented, with many embassies appearing to expect a showing that the U.S. person would imminently cease to exist without the visa applicant.

23. The final factor to obtain a waiver is to establish that the applicant is not a threat to national security or public safety. According to a DOS representative at the AILA Annual Conference 2018, this factor requires a consular officer to determine the undue hardship and national interest factors first and then to refer the case to the DOS Visa Office in the U.S. Once at the Visa Office an analysis via internal security officers of the U.S. government, as authorized by INA 105(a), is carried out. This process of coordination was opaquely described in the DOS to Senator Hollen as follows: "to establish that an applicant does not constitute a threat to national security or public safety, the consular officer considers the information-sharing and identity-management protocols and practices of the government of the applicant's

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country of nationality as they relate to the applicant. If the consular officer determines, after consultation with the Visa Office, that an applicant does not pose a threat to national security or public safety and the other two requirements have been met, a visa may be issued with the concurrence of a consular manager." It is often indicated that a consular officer has found the previous two criteria satisfied by the issuance of Form DS-5535 or a list of questions taken from the form.

24. The DOS's description of the process to satisfy the national security or public safety threat analysis appears to be substantively similar to the review allegedly done to evaluate countries for inclusion in P.P. 9645. In particular, countries that are subject to P.P. 9645 allegedly failed to satisfy the "global requirements for information sharing in support of immigration screening and vetting" as set out in the Proclamation. Therefore, the national security or public safety threat analysis, as described to Senator Hollen, appears to be a sham as virtually nobody would be able to satisfy the information sharing requirements, if the country of their nationality truly failed to satisfy the requirements during the alleged analysis and consultation completed by the Secretary of State, Secretary of Homeland Security, and the Attorney General.

25. Based on the patterns and behaviors of cases undergoing additional review both before and after the issuance of the various travel bans, including P.P. 9645, it appears that DOS has implemented "extreme vetting" by merging its Visas Condor, Visas Donkey, and Visas Viper programs and removed the basic screening criteria for individuals from P.P. 9645 designated countries. Visas Condor is an additional screening and background check process for individuals from the T-7 list of State Sponsors of Terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria) and the List of 26, countries with allegedly significant terrorist activity (Afghanistan, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, UAE, Yemen). Visas Condor is a mandatory stop list that utilizes ICE's Pre-Adjudicated Threat Recognition and Intelligence Operations Team along with resources at the FBI, DOS, CIA, and other agencies in order to evaluate whether a mandatory stop should

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be ordered for a visa applicant. Visas Condor, except for "extreme vetting", is largely automated for the majority of applicants and often takes less than a week to complete an evaluation. Visas Donkey is a namecheck and biometric information evaluation for potential IDENT or HIT matches that then cause additional review in 2% to 3% of all cases. Visas Donkey often takes between 4 and 6 months to complete review. Visas Viper is used to review biometric details of visa applicants for matches with known or suspected terrorists and can often take upwards of a year to complete review. Prior to the implementation of P.P. 9645, cases went through a preliminary screening process to identify the probability of a Visas Condor, Donkey, or Viper match requiring further review. After the implementation of P.P. 9645, it appears that all cases for individuals from the designated countries go through complete Visas Condor, Donkey, and Viper evaluations and less than 2% of cases appear to pass through the evaluations quickly. Prior to the proclamation, when a visa applicant had a Visas Donkey or Visas Viper hit, it was normal for DOS to request additional information similar to that included on the new Form DS-5535.

26. Consular officers regularly issue a Form DS-5535 or questions similar to it once the officer is satisfied that the undue hardship and national interest factors are satisfied. It is my opinion that the Form DS-5535 is being used to carry out the full evaluations necessary to complete in-depth Visas Condor, Donkey, and Viper evaluations. It is possible that other Visas programs are being used as well or have been created to satisfy this requirement, but these are the systems that I am aware of due to my research on the causes of administrative processing and national security review. It now appears that DOS has made full review with each of these Visas systems mandatory for all cases for visa applicants from the designated countries under P.P. 9645. As a result, Visas programs that were originally designed to quickly screen cases and then refer only a small percentage for in-depth scrutiny, are now being used to carry out extensive investigations on all applicants from the designated countries.

27. Based upon the lengthy delays in evaluating the national security and public safety factor for visa applicants from P.P. 9645 designated countries, it is my opinion that DOS and its partner

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agencies fundamentally lack the resources to carry out the vast increase in background checks necessary to utilize a full Visas Condor, Viper, and Donkey investigation on every case from the P.P. 9645 designated countries. In part this lack of resources was emphasized by former Secretary of State Rex Tillerson when he issued new interview guidelines last year: "In order to ensure that proper focus is given to each application, posts should generally not schedule more than 120 visa interviews per consular adjudicator/per day. Please [note] that limiting scheduling may cause interview appointment backlogs to rise." DOS Cable SUPERSEDING 17 STATE 24324: IMPLEMENTING IMMEDIATE HEIGHTENED SCREENING AND VETTING OF VISA APPLICATIONS, 17 STATE 25814 (Mar. 17, 2017). As anticipated by former Secretary Tillerson, tremendous backlogs have resulted internationally due to the heightened screening and vetting processes. Even with the small reduction in the number of visa interviews per consular adjudicator per day, it appears that consular officers cannot keep up with the workload necessary to evaluate each case (even when disallowing the submission of supporting documents) for satisfaction of the criteria for a P.P 9645 § 3(c) waiver. Furthermore, the backlogs caused by the unnecessary elimination of the basic screening criteria for Visas Condor, Donkey, and Viper when applied to visa applicants from the P.P. 9645 designated countries, has adversely impacted the U.S. immigration system as a whole. As a result, the review of cases that legitimately have hits in Visas Donkey, Condor, and Viper screening process are slowed and the effectiveness of these programs has been diminished. For example, a professor from Europe had a name hit with a known terrorist, which resulted in review under Visas Viper. The professor had never traveled to any of the designated countries or any of the Visas Condor countries. Nevertheless, he was required to complete a DS-5535 and his case was held in administrative processing for over a year. Ultimately the professor's only choice to resolve the case was to either lose his job or seek a writ of mandamus against the Department of State for failing to adjudicate his case in a reasonable amount of time. Within days of the filing of the writ of mandamus, his visa was approved. Fundamentally the professor's case is one illustration of how the enormous backlogs caused by the elimination of basic screening principles in order

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to implement extreme vetting through the P.P. 9645 waiver process has adversely impacted visa applications worldwide for no apparent tangible benefit.

28. In conclusion, it is my opinion that the haphazardly implemented provisions of P.P. 9645 result in an unnecessary burden on the Department of State, excessive and unnecessary denials for individuals with legitimate cases from the designated countries, and fundamentally appears to be little more than a sham due to the recursive requirements of its apparent implementation.

I declare under penalty of perjury on this 26th day of July 2018 that the foregoing is true and correct to the best of my knowledge, experience, and understanding.

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Exhibit E

United States Department of State

Washington, D.C. 20520

FEB 22 2018

The Honorable
Chris Van Hollen
United States Senate
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your letter of January 31 regarding Presidential Proclamation 9645 on *Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public Safety Threats* (the Proclamation), which suspended the entry into the United States of certain nationals of eight designated countries, Chad, Iran, Libya, Syria, Yemen, North Korea, Venezuela and Somalia. In particular you request information regarding the processing of waivers for nationals of these countries following the Supreme Court's December 4, 2017 stay of injunctions entered by lower courts which enjoined the implementation of the Proclamation. We are responding questions posed in your letter that relate to the Department of State. The Department of Homeland Security will write to you relating to issues under its authority.

Section 1(b) of the Proclamation stresses that it is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats and that screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. Further, the Proclamation notes that information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. It determines that the governments of Chad, Iran, Libya, Syria, Yemen, North Korea, Venezuela and Somalia had inadequate identity-management protocols, information-sharing practices, and risk factors, such that entry restrictions and limitations are required.

Section 3(b) of the Proclamation specifically excepts certain nationals of the designated countries from the Proclamation's entry restrictions, and section 3(c) provides for a case-by-case waivers of the entry restrictions. The entry restrictions of the Proclamation may be waived if a consular officer determines that the applicant meets each of the following three criteria: (1) denying entry would cause the foreign national undue hardship; (2) entry would not pose a threat to the national security or public safety of the United States; and (3) entry would be in the national interest.

As part of the visa application process, all aliens are required to submit an online visa application form. The application form requests a variety of information about the alien's history and background, including his family relationships, work experience, and criminal record. See, e.g., 8 U.S.C. § 1202(b). The visa application process includes an in-person interview and results in a decision by a consular officer. 8 U.S.C. §§ 1201(a)(1), 1202(h), 1204; 22 C.F.R. §§ 41.102, 42.62.

When adjudicating the visa application of an applicant subject to the Proclamation, the consular officer must first determine whether the applicant is eligible for a visa under the provisions of the Immigration and Nationality Act (INA). The applications of both immigrant and nonimmigrant visa applicants from the designated countries are processed in the same manner as all other applicants for U.S. visas. This processing includes screening of their fingerprints and biometric information though the Department's Consular Lookout and Support System (CLASS) database; and screening through IDENT (which contains DHS fingerprint records), NGI (the FBI Next Generation Identification database), and the Department's Facial Recognition database, which contains watchlist photos of known and suspected terrorists obtained from the FBI's Terrorist Screening Center (TSC) as well as the entire gallery of prior visa applicant photos. If an applicant from one of the designated countries is determined to be otherwise eligible for a visa under the INA, the interviewing officer must then determine whether the applicant falls into one of the exceptions to the Proclamation. Only if the otherwise eligible applicant does not fall within an exception, will the consular officer consider the applicant for a waiver. Each applicant who meets the conditions set forth in section 3(c) of the Proclamation must be considered for a waiver. There is no waiver form to be completed by the applicant.

Consular officers may grant waivers on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that he or she meets the three criteria discussed above. First, to satisfy the undue hardship criterion, the applicant must demonstrate to the consular officer's satisfaction that an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans would defeat the purpose of travel. Second, the applicant's travel may be considered in the national interest if the applicant demonstrates to the consular officer's satisfaction that a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted.

Finally, to establish that the applicant does not constitute a threat to national security or public safety, the consular officer considers the information-sharing and identity-management protocols and practices of the government of the applicant's country of nationality as they relate to the applicant. If the consular officer determines, after consultation with the Visa Office, that an applicant does not pose a threat to national security or public safety and the other two requirements have been met, a visa may be issued with the concurrence of a consular manager.

Section 3(c)(iv) of the Proclamation provides examples of the circumstances in which a waiver might be appropriate. The Department's worldwide guidance to consular officers regarding waivers is drawn directly from the Proclamation. Further, consular officers may consult with the Visa Office if a consular officer believes a case may warrant a waiver but the applicant's circumstances do not align with one of the examples in the Proclamation.

Your letter also requests statistical information about the number of applicants from the designated countries who have applied for visas and those who have received waivers. Unfortunately, some of the information you seek is not readily available in the form you have requested. Nonetheless, we can provide the information attached.

We hope this information is responsive to your concerns. Please do not hesitate to contact us further should you require additional information.

Sincerely,

Mary K. Waters
Assistant Secretary
Legislative Affairs

Enclosure: As stated

SENSITIVE BUT UNCLASSIFIED

VISA APPLICATIONS RECEIVED AND PROCESSED FROM NATIONALS SUBJECT TO PRESIDENTIAL PROCLAMATION 9645
(From December 8. 2017 to January 8, 2018

This non-public information is being provided to address your request as fully as possible. Not for public release without prior consultation with the Department of State.

Applications for nonimmigrant and immigrant visas:	8,406
Applicants refused for reasons unrelated to the Proclamation:	1,723
Applicants qualifying for an exception:	128
Applicants who failed to meet the criteria for a waiver	6, 282
Applications refused under the Proclamation with waiver consideration:	271

Waivers approved (as of February 15): 2

SENSITIVE BUT UNCLASSIFIED

Exhibit F

Announcing NVC's EB-5 Investor Assistance Desk

Montreal to Handle All Fiancé(e) Visa Interviews in Canada

The Department of State Meeting with the American Immigration Lawyers Association (AILA)

The Department of State Meeting with the American Immigration Lawyers Association (AILA)

National Visa Center Meeting with American Immigration Lawyers Association (AILA)

Visa Application Fees to Change April 13

Revisions to Presidential Proclamation 9645

April 10, 2018

On April 10, a new Presidential Proclamation (P.P.) was issued which amended P.P. 9645 of September 24, 2017. The new P.P. removes the visa restrictions imposed on nationals of Chad by the earlier P.P. This change will be effective at 12:01a.m., Eastern Daylight Time, on Friday, April 13, 2018. All other visa restrictions outlined in P.P. 9645 remain in effect.

Additional Background:

The President issued Presidential Proclamation 9645, titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats," on September 24, 2017. Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were determined to be "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

As a result of the April 10 Proclamation, nationals of seven countries are currently subject to various travel restrictions contained in the Proclamation, as outlined in the following table, subject to exceptions and waivers set forth in the Proclamation.

Country	Nonimmigrant Visas	Immigrant and Diversity Visas
Iran	No nonimmigrant visas except F, M, and J visas	No immigrant or diversity visas

Not in Effect

Learn how the Department of State is meeting the growing demand for visas

Final Rule: Issuance of Full Validity L Visas to Qualified Applicants

Capitalizing on Visa Demand to Spur Economic Growth in the United States

State Department Supports Global Travel Growth

Diversity Visa Program (DV-2013) Registration

Transportation Worker Identification Credential (TWIC) - Visa Annotations for Certain Maritime Industry Workers

Diversity Visa Lottery (DV-2012) Registration

Department of Homeland Security Announced ESTA Fee Implementation, Effective September 8

Immigrant Visa Application Fees to Increase July 13, 2010

Nonimmigrant Visa Application Fees to Increase June 4

Korea	No nonimmigrant visas	diversity visas
Somalia		No immigrant or diversity visas
Syria	No nonimmigrant visas	No immigrant or diversity visas
Venezuela	No B-1, B-2 or B-1/B-2 visas of any kind for officials of the following government agencies Ministry of Interior, Justice, and Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People's Power Ministry of Foreign Affairs, and their immediate family members.	
Yemen	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas

In accordance with P.P. 9645, for nationals of the seven designated countries, a consular officer will determine whether an applicant otherwise eligible for a visa is exempt from the Proclamation or, if not, may be eligible for a waiver under the Proclamation allowing issuance of a visa.

No visas will be revoked pursuant to P.P. 9645. Individuals subject to P.P. 9645 who possess a valid visa or valid travel document generally will be permitted to travel to the United States, irrespective of when the visa was issued.

We will keep those traveling to the United States and our partners in the travel industry informed as we implement the order in a professional, organized, and timely way.

FAQs on the Presidential Proclamation - Department of Homeland Security

The President's Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (September 24, 2017)

Presidential Proclamation Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (April 10, 2018)

Frequently Asked Questions

Why were the visa restrictions against Chad removed in the April 10 Presidential Proclamation?

As part of a periodic review of countries as directed in Executive Order 13780, Chad was found to meet the baseline criteria established by the Department of Homeland Security. Specifically, Chad has made significant progress toward modernizing its passport documents, regularizing processes for routine sharing of criminal and terrorist threat information, and improving procedures for reporting of lost and stolen passports.

What are the exceptions in the Proclamation?

The following exceptions apply to nationals from all eight countries and will not be subject to any travel restrictions listed in the Proclamation:

a) Any national who was in the United States on the applicable effective date described in Section 7 of the Proclamation for that national, regardless of immigration status;

b) Any national who had a valid visa on the applicable effective date in Section 7 of the Proclamation for that national;

c) Any national who qualifies for a visa or other valid travel document under section 6(d) of the Proclamation;

Services

Effective January 4, 2010 HIV Infection is Removed from the CDC List of Communicable Diseases of Public Health Significance

Proposal to Increase Nonimmigrant Visa Application Fees

Diversity Visa Lottery (DV-2011) Registration

Visa Waiver Program (VWP) emergency or temporary passports must be electronic passports (e-Passports)

Legal Rights and Protections for Certain Employment or Education-based Nonimmigrants– Notice: Informational Pamphlet is Now Available!

President Obama signs into law, an extension for "SR" nonminister special immigrant religious workers

Nonminister Special Immigrant Religious Worker Program Expiration

President Bush Announces Visa Waiver Program Expansion - VWP

applicable effective date in Section 7 of the Proclamation for that national;

f) Any applicant who has a document other than a visa, valid on the applicable effective date in Section 7 of the Proclamation for that applicant or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;

g) Any dual national of a country designated under the Proclamation when traveling on a passport issued by a non-designated country;

h) Any applicant traveling on a diplomatic (A-1 or A-2) or diplomatic-type visa (of any classification), NATO-1 -6 visas, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; except certain Venezuelan government officials and their family members traveling on a diplomatic-type B-1, B-2, or B1/B2 visas

i) Any applicant who has been granted asylum; admitted to the United States as a refugee; or has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Exceptions and waivers listed in the Proclamation are applicable for qualified applicants. In all visa adjudications, consular officers may seek additional information, as warranted, to determine whether an exception or a waiver is available.

If a principal visa applicant qualifies for an exception or a waiver under the Proclamation, does a derivative also get the benefit of the exception or waiver?

Each applicant, who is otherwise eligible, can only benefit from an exception or a waiver if he or she individually meets the conditions of the exception or waiver.

Does the Proclamation apply to dual nationals?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country.

Our embassies and consulates around the world will process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants who apply with a passport from a non-designated country, even if they hold dual nationality from one of the eight restricted countries.

Does this apply to U.S. Lawful Permanent Residents?

No. As stated in the Proclamation, lawful permanent residents of the United States are not affected by the Proclamation

Are there special rules for permanent residents of Canada?

Waivers may not be granted categorically to any group of nationals of the eight countries who are subject to visa restrictions pursuant to the Proclamation, but waivers may be appropriate in individual circumstances, on a case-by-case basis. The Proclamation lists several circumstances in which case-by-case waivers may be appropriate. That list includes foreign nationals who are Canadian permanent residents who apply for visas at a U.S. consular section in Canada. Canadian permanent residents should bring proof of their status to a consular officer.

A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation during each phase of the implementation and, if so, whether the applicant qualifies for an exception or a waiver.

Will you process waivers for those affected by the Proclamation? How do I qualify for a waiver to be issued a visa?

As specified in the Proclamation, consular officers may issue a visa based on a listed waiver category to nationals of countries identified in the PP on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no

Department of State Announces Diversity Visa Lottery (DV-2010) Registration

DHS Announces Implementation of the Electronic System for Travel Authorization (ESTA) for Visa Waiver Program (VWP) Travelers

USCIS Announces a Proposal to Increase Periods of Stay for TN Professional Workers from Canada or Mexico

New York Business Group Seeks Fewer Restrictions on Foreign Worker Visas

Overseas Education More Attainable for Chinese Students

Immigration Tops Agenda at North American Summit

The Department of State Meeting with the American Immigration Lawyers Association (AILA)

USCIS Modifies Application for Employment Authorization Previous Versions of Form I-765 Accepted until July 8, 2008

DHS Proposes Biometric Airport and Seaport Exit Procedures

DHS Signs Visa

during the visa interview any information that might demonstrate that he or she is eligible for a waiver.

What is a "close family member" for the purposes of determining if someone is eligible for a waiver?

Section 201(b) of the INA provides a definition of immediate relative, which is used to interpret the term "close family member" as used in the waiver category. This limits the relationship to spouses, children under the age of 21, and parents. While the INA definition includes only children, spouses, and parents of a U.S. citizen, in the context of the Presidential Proclamation it also includes these relationships with LPRs and aliens lawfully admitted on a valid nonimmigrant visa in addition to U.S. citizens.

Can those needing urgent medical care in the United States still qualify for a visa?

Applicants who are otherwise qualified and seeking urgent medical care in the United States may be eligible for an exception or a waiver. Any individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might qualify the individual for an exception or waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation, and if so, whether the case qualifies for an exception or a waiver.

The Proclamation provides several examples of categories of cases that may be appropriate for consideration for a waiver, on a case-by-case basis, when in the national interest, when entry would not threaten national security or public safety, and denial would cause undue hardship. Among the examples provided, a foreign national who seeks to enter the United States for urgent medical care may be considered for a waiver.

I'm a student or short-term employee that was temporarily outside of the United States when the Proclamation went into effect. Can I return to school/work?

If you have a valid, unexpired visa and are outside the United States, you can return to school or work per the exception noted in the Proclamation.

If you do not have a valid, unexpired visa and do not qualify for an exception you will need to qualify for the visa and a waiver. An individual who wishes to apply for a nonimmigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for a waiver.

I received my immigrant visa but I haven't yet entered the United States. Can I still travel there using my immigrant visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

I recently had my immigrant visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, you should proceed to submit your documentation. After receiving any required missing documentation or completion of any administrative processing, the U.S. embassy or consulate where you were interviewed will contact you with more information.

I am currently working on my case with NVC. Can I continue?

USCIS Issues Guidance for Approved Violence against Women Act (VAWA) Self-Petitioners

USCIS to Allow F-1 Students Opportunity to Request Change of Status

USCIS Runs Random Selection Process for H-1B Petitions

USCIS Announces Update for Processing Petitions for Nonimmigrant Victims of Criminal Activity

USCIS Releases Preliminary Number of FY 2009 H-1B Cap Filings

USCIS Revises Filing Instructions for Petition for Alien Relative

USCIS to Accept H-1B Petitions Sent to California or Vermont Service Centers Temporary Accommodation Made for FY 09 Cap-Subject H-1B Petitions

17-Month Extension of Optional Practical Training for Certain Highly Skilled Foreign Students

Hague Convention on Intercountry Adoption Enters

interview, a consular officer will carefully review the case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or may qualify for a waiver.

What immigrant visa classes are subject to the Proclamation?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Proclamation and restricted. All immigrant visa classifications for nationals of Venezuela are unrestricted. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or a waiver.

I sponsored my family member for an immigrant visa, and his interview appointment is after the effective date of the Proclamation. Will he still be able to receive a visa?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Presidential Proclamation and suspended. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the applicant qualifies for an exception or a waiver.

I am applying for a K (fiancé) visa. My approved I-129 petition is only valid for four months. Can you expedite my case?

The National Visa Center already expedites all Form I-129F petitions to embassies and consulates overseas. Upon receipt of the petition and case file, the embassy or consulate will contact you with instructions on scheduling your interview appointment.

I received my Diversity Visa but I haven't yet entered the United States. Can I still travel there using my Diversity Visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

I recently had my Diversity Visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, please provide the requested information. The U.S. embassy or consulate where you were interviewed will contact you with more information.

Will my case move to the back of the line for an appointment?

No. KCC schedules appointments by Lottery Rank Number. When KCC is able to schedule your visa interview, you will receive an appointment before cases with higher Lottery Rank Numbers.

I am currently working on my case with KCC. Can I continue?

Yes. You should continue to complete your Form DS-260 immigrant visa application. KCC will continue reviewing cases and can qualify your case for an appointment. You will be notified about the scheduling of a visa interview.

Comment Period for Proposed Change to H-2A Program

USCIS Revises Filling Instructions for Petition for Alien Relative

Questions and Answers: USCIS Announces Interim Rule on H-1B Visas

Fact Sheet: Changes to the FY2009 H-1B Program

USCIS Announces Interim Rule on H-1B Visas

DHS Signs Visa Waiver Program Agreements with Slovakia, Hungary and Lithuania

Latvia, Estonia Sign Deals with US on Visa-Free Travel

With All the Talk about Illegal Immigration, a Look at the Legal Kind

Update: Biometric Changes for Re-entry Permits and Refugee Travel Documents

Testimony of Stephen A. "Tony" Edson on U.S. House of Representatives, Committee on Science and Technology Subcommittee on Research and Science Education, House Committee on Science and

KCC will continue to schedule new DV interview appointments for nationals of the affected countries. A national of any of those countries applying as a principal or derivative DV applicant should disclose during the visa interview any information that might qualify the individual for a waiver/exception. Note that DV 2018 visas, including derivative visas, can only be issued during the program year, which ends September 30, 2018, and only if visa numbers remain available. There is no guarantee a visa will be available in the future for your derivative spouse or child.

What if I am a dual national or permanent resident of Canada?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country. You may apply for a DV using the passport of a non-designated country even if you selected the nationality of a designated country when you entered the lottery. Also, permanent residents of Canada applying for DVs in Montreal may be eligible for a waiver per the Proclamation, but will be considered on a case-by-case basis. If you believe one of these exceptions, or a waiver included in the Proclamation, applies to you and your otherwise current DV case has not been scheduled for interview, contact the U.S. embassy or consulate where your interview will take place/KCC at KCCDV@state.gov.

Does this Proclamation affect follow-to-join asylees?

The Proclamation does not affect V92 applicants, follow-to-join asylees.

I've heard that the Department of State does not grant waivers of the Proclamation. Is this correct?

This information is incorrect. As specified in the Proclamation, consular officers may issue a visa to nationals of countries covered by the Proclamation with a waiver on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security or public safety threat to the United States, and denial of the visa would cause undue hardship. There is no separate application for a waiver. An individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver. From December 8, 2017 through April 1, 2018, more than 430 applicants were cleared for waivers after a consular officer determined the applicants satisfied all criteria and completed all required processing. Many of those applicants already have received their visas.

Exhibit G

Gmail by Google

Shabnam Lotfi <shabnam@lotfilegal.com>

Request for Clarity: [redacted] Case Number [redacted]

Vancouver, NIV Unit <vancouverniv@state.gov> Tue, Jan 9, 2018 at 2:42 PM
To: Shabnam Lotfi <shabnam@lotfilegal.com>

Dear Shabnam Lofti,

A consular officer may issue a visa based on a listed waiver category to nationals of countries identified in the Presidential Proclamation on a case-by-case basis.

It has been determined that your client, [redacted], does not meet the definition of close family as she is over 21 years of age.

This decision cannot be appealed.

Non-Immigrant Visa Unit

U.S. Consulate General Vancouver

From: Shabnam Lotfi [mailto:shabnam@lotfilegal.com]
Sent: Wednesday, January 03, 2018 12:41 PM
To: Vancouver, NIV Unit
Cc: [redacted]
Subject: Request for Clarity: [redacted] Case Number [redacted]

Dear Consular Officer,
Per your communication (see attached), it appears as though my client, [redacted], has been denied the opportunity to request a waiver of the presidential proclamation.

According to the presidential proclamation itself and guidance on the State Department's website, foreign nationals who seek to enter the US to be reunited with a close family member (e.g. spouse, child, or parent) are eligible for requesting a waiver.

My client is the daughter of a United States citizen. Could you kindly explain why your office has denied my client the opportunity to request a waiver of the presidential proclamation?

Respectfully,

Attorney Shabnam Lotfi

Lotfi Legal, LLC

22 East Mifflin St Ste 302

Madison, WI 53703

(608) 259-6226

shabnam@lotfilegal.com

www.lotfilegal.com

Official

UNCLASSIFIED

Exhibit H

From: Abu Dhabi, IV [mailto:AbuDhabiIV@state.gov]
Sent: Thursday, July 19, 2018 9:04 AM
To: Zahedilaw
Subject: RE: Case# ABD2015772009

Dear Ms. Zahedi,

As we said, we have all the required documents at this time. We have already submitted a waiver request on behalf of the applicant, as the applicant was informed during the interview. There is no role or requirement for legal services to facilitate the waiver process, which the Embassy initiated as soon as the applicant was interviewed.

Please note – and inform your client – that only U.S. government officials can author waiver requests.

Sincerely,

Consular Section

U.S. Embassy Abu Dhabi

Official - Privacy/PII

UNCLASSIFIED

From: Zahedilaw [mailto:zahedi@zahedilaw.com]
Sent: Wednesday, July 18, 2018 7:57 PM
To: Abu Dhabi, IV
Subject: RE: Case# ABD2015772009

Dear Consular Officer:

Thank you very much for your kind reply.

Could you please kindly let us know whether you will allow our office to submit a waiver packet on behalf of the beneficiary to outline and present evidence that he meets the grounds for approval of a waiver in consideration of the three

grounds outlined by Section 3(c) of the Proclamation, related to (1) undue hardship, (2) entry not posing a threat to the national security or public safety of the US and (3) entry would be in the national interest.

Thank you again for your attention in this matter.

Regards

Parastoo G. Zahedi

Attorney At Law

Law Office Of Zahedi PLLC
8133 Leesburg Pike Suite 770
Vienna, VA 22182
Phone: 703-448-0111
Fax: 703-448-5552

Corporate Immigration 2017-2018

From: Abu Dhabi, IV [mailto:AbuDhabiIV@state.gov]

Sent: Wednesday, July 18, 2018 4:33 AM
To: Zahedi Law
Subject: RE: Case# ABD2015772009

Dear Ms. Zahedi,

We have all the required documents at this time. Please note that the case will remain in refused status if and until a waiver is approved.

Sincerely,

Consular Section

U.S. Embassy Abu Dhabi

Official - Privacy/PII

UNCLASSIFIED

Exhibit I

Consular Section of the
Embassy of the United States of America
Yerevan, Armenia

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

✓ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

☐ The consular officer is reviewing your eligibility for a waiver under the Proclamation. To approve a waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your visa application will remain refused under Section 212(f). You will be contacted with a final determination on your visa application as soon as practicable.

Regards,
Nonimmigrant Visa Unit

متقاضی گرامی،

به اطلاع می رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

✓ با در نظر گرفتن مقررات این بیانیه، درپرونده شما این محدودیت چشم پوشی نخواهد شد.

☐ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر
بخش ویزای غیر مهاجرتی

Exhibit J

United States Department of State

Washington, D.C. 20520

JUN 22 2018

The Honorable
Chris Van Hollen
United States Senate
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your letter of April 19 regarding the implementation of Presidential Proclamation 9645 (PP 9645) *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,* in which you reference the letter we sent you and Senator Jeff Flake on February 22 and seek additional information about the impact of the Proclamation on the processing of U.S. visas.

We defer to the Department of Homeland Security to address your request for reports submitted by the Secretary of Homeland Security to the White House pursuant to section 4(a) of PP 9645. We further note that PP 9645 sets out the basis for the designation of the countries listed and specifies the inadequacies in identity management protocols, information-sharing practices, and other risk factors that resulted in those countries being subject to the stated travel restrictions.

As discussed in our February 22 letter, the Department's worldwide guidance to consular officers regarding when a waiver pursuant to section 3(c) of PP 9645 may be granted is drawn directly from PP 9645 itself. That letter contains further information about how consular officers determine that the applicant has met each of the three criteria for a waiver. The Department's internal operational guidance is intended for consular officer's internal use only and is not publicly available, as well as being the subject of ongoing litigation upon which we cannot comment.

The Department does not routinely maintain the statistics you have requested in the form which you have requested. We have attached the available information which we believe is responsive to your concerns. As noted on the Department's public website, Travel.State.Gov, (https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/RevisionatoPresidentialProclamation9645.html) from December 8, 2017 through May 31, 2018, more than 768 applicants were cleared for waivers after a consular officer determined the applicants satisfied all criteria and completed all required processing. (This information is updated every two weeks.) Many of those applicants received their visas. In the months since full implementation of PP 9645 began on December 8, 2017, the number of cases cleared for waivers has grown at an increasing rate. We note that the statistic provided with our February 22 letter which stated that two cases had been cleared for waivers, was as of January 8 (the attachment mistakenly indicated February 15), or only after one month of processing cases under PP 9645. The increase in the number of cleared waivers, and the decrease in the time required to clear a waiver was expected as time elapsed.

We hope this information is helpful. Please do not hesitate to contact us further on this or any other matter.

Sincerely,

Mary K. Waters
Assistant Secretary
Legislative Affairs

Enclosure: As stated

This non-public information is being provided to address your request as fully as possible and is for your use in your legislative work.
Not for public release without prior consultation with the Department of State.

VISA APPLICATIONS RECEIVED AND PROCESSED FROM NATIONALS SUBJECT TO PRESIDENTIAL PROCLAMATION 9645
(As of April 30 unless otherwise stated)

(Note: The points below contain preliminary data which are subject to change. Any changes should not be statistically significant.)

Number of NIV and IV applications from impacted nationalities who applied for visas in the P.P. 9645 covered categories: 33,176

Number of applicants found ineligible for reasons other than those covered in P.P. 9645(e.g. INA 214(b)) so a review for eligibility under P.P. 9645 was not required: 4,900

Number of applicants who received a visa under an exception from P.P. 9645: 1,147

Number of applicants cleared for waivers: 579 (768 as of May 31)

Number of applicants interviewed, but still awaiting a determination on a waiver: 4,157

Exhibit K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AHMAD ALHARBI, ET AL.,	:	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
Plaintiff,	:	
	:	18-CV-2435 (BMC)
- against -	:	
STEPHEN MILLER, ET AL.,	:	
Defendant.	:	

COGAN, District Judge.

This case is before the Court on plaintiffs' motion for a preliminary injunction. The parties have submitted motion papers in support of and opposition to the motion, and the Court has held a hearing on the matter. The Court's findings and conclusions pursuant to Rule 52(a) of the Federal Rules of Civil Procedure are set forth below. To summarize, plaintiffs are likely to succeed on their petition for a writ of mandamus under the Mandamus Act, 28 U.S.C. § 1361, and most plaintiffs are entitled to have the Government provide them with their printed, issued visas.

FINDINGS OF FACT

1. Plaintiffs are members of twenty-one different families, each of which has one or two United States citizens or lawful permanent residents ("plaintiffs-petitioners") who filed Form I-130 Petitions for Alien Relatives on behalf of one or more family members who are citizens or nationals of Yemen ("plaintiffs-beneficiaries").

2. United States Citizenship and Immigration Services ("USCIS") approved the I-130 Petitions and forwarded them to the State Department's National Visa Center to begin pre-processing of potential visa applications by the plaintiffs-beneficiaries.

3. Subsequently, the State Department transferred plaintiffs-beneficiaries' immigrant visa cases from the Embassy in Sana'a, Yemen (where consular services are indefinitely suspended), to the Embassy in Djibouti, one of the consular sections where Yemeni nationals may now apply for visas.

4. The current conflict in Yemen subjected plaintiffs-beneficiaries to severe hardships, as they struggled to survive in a warzone described in detail in declarations they submitted in support of this motion.

5. Accordingly, plaintiffs-beneficiaries fled from Yemen and traveled to Djibouti, where they still reside. There they faced, and continue to face, a new host of hardships as effectively stateless immigrants. In their declarations, plaintiffs-beneficiaries describe poverty, inadequate medical care, poor education, and isolation.

6. When they arrived in Djibouti, plaintiffs-beneficiaries contacted the Embassy to schedule immigrant visa interviews.

7. Documentary and declaratory evidence supports finding that the following plaintiffs-beneficiaries were issued "approval notices" after their consular interviews, which took place between July and November, 2017: Nidal Assieby, Ahmad Alharbi, Riyadh Alharbi (child of Riyadh Alharbi and Nidal Assieby), Ghadeer Murshed, Taha Thabit, Aisha Thabit, Qasem Thabit, Emad Mugamal, Jehan Alnajjar, Duaa Mugamal, Shahd Mugamal, Musleh Mugamal, Mohamed Mugamal, Hussain Mugamal, Sami Al-Namer, Sadam Mugamal, Yasmeen Mugamal, Salah Mugamal, Nadia Saleh, Nooira Mugamal, Layan Mugamal, Laila Ali, Dheyazan Saeed,

Rashed Al Shugaa, Bassam Almontaser, Aisha Ragih, and Ali Hamood (collectively, "approved plaintiffs-beneficiaries").[1]

8. Each approval notice read, "[y]our visa is approved. We cannot guarantee how long it will take to print it and have your passport ready for pick up. You should check the status of your visa online . . . ." The approval notices then listed a State Department website at which approved plaintiffs-beneficiaries could check their visa status.

9. Interviewing Consular Officers told several of the approved plaintiffs-beneficiaries to continue checking in, to wait for their visas to be printed, or that they would receive their visas shortly.

10. Proclamation 9645 suspends entry into the United States for most Yemeni nationals. However, section 6(c) of Proclamation 9645 states that "[n]o immigrant or nonimmigrant visa issued before the applicable effective date . . . of this proclamation shall be revoked pursuant to this proclamation."[2]

11. At the time Proclamation 9645 went into effect, Consular Officers had not yet printed approved plaintiffs-beneficiaries' actual visas; none of them had received their visas.

1. After approved plaintiffs-beneficiaries had obtained their approval notices, the Supreme Court issued a stay order on December 4, 2017. See Trump v. Hawaii, 138 S. Ct. 542 (2017). That order effected a stay of preliminary injunctions issued by federal district courts in

[1] The evidence does not support a finding that Gameelah Alharbi and Iseal Mussa received approval notices. In her declaration, Gameelah Alharbi states that she "was told to wait in 'admin processing.'" Iseal Mussa's father has submitted a declaration that does not make it clear that his son received an approval notice. The evidence shows that Ahmed Al Saidi was issued an expired visa.

[2] A previous iteration of Proclamation 9645, Executive Order 13769, suspended entry or re-entry into the United States by certain aliens from listed countries (including Yemen) regardless of whether they had already been issued a valid immigrant or non-immigrant visa. Several courts issued injunctions against that order, finding that it was likely to violate due process rights of certain aliens. See Washington v. Trump, 847 F.3d 1151, 1156 (9th Cir.), reconsideration en banc denied, 853 F.3d 933 (9th Cir. 2017), and reconsideration en banc denied, 858 F.3d 1168 (9th Cir. 2017), and cert. denied sub nom. Golden v. Washington, 138 S. Ct. 448 (2017).

Hawaii and Maryland. Those preliminary injunctions had stayed implementation of Presidential Proclamation 9645 ("Proclamation 9645"). By reason of the stay order, Proclamation 9645 became operative again.

2. Consular Officers at the Embassy in Djibouti subsequently notified the approved plaintiffs-beneficiaries that pursuant to Proclamation 9645, their immigrant visa applications were refused with no right of appeal.

CONCLUSIONS OF LAW

3. A district court may issue a mandatory preliminary injunction, which commands the Government to perform a specific act, only if 1) the movant establishes that it will suffer irreparable harm; and 2) the movant "has shown a 'clear' or 'substantial' likelihood of success on the merits." Mastrovincenzo v. City of New York, 435 F.3d 78, 89 (2d Cir. 2006). Additionally, the Court must find that the balance of hardships tips decidedly toward the party requesting the preliminary relief. See Gold v. Feinberg, 101 F.3d 796, 800 (2d Cir. 1996) (internal quotations omitted). Finally, "the court must ensure that the public interest would not be disserved by the issuance of a preliminary injunction." Salinger v. Colting, 607 F.3d 68, 80 (2d Cir. 2010).

4. Approved plaintiffs-beneficiaries are likely to suffer irreparable harm if the Government does not provide them with printed, issued visas. They originally fled Yemen, which they credibly describe as a horrific warzone (a portrayal the Government does not dispute), and must now contend with highly adverse circumstances in Djibouti. As described in their declarations, vulnerability and uncertainty define their future.

5. Plaintiffs have shown that they are clearly likely to succeed on their petition for a writ of mandamus. To do so, they must demonstrate 1) a clear right to the relief sought; 2) a plainly

defined and peremptory duty on the part of the defendants to do the act in question; and 3) no other adequate remedy available. See Anderson v. Bowen, 881 F.2d 1, 5 (2d Cir. 1989).

6. A visa application takes several steps. See generally Saleh v. Tillerson, 293 F. Supp. 3d 419, 431 (S.D.N.Y. 2018). First, a U.S. citizen or lawful permanent resident files an I-130 petition with USCIS seeking to have an alien relative classified as an immediate relative. See 8 U.S.C. § 1154(a)(1)(A); § 1151(b)(2)(A)(i). After USCIS classifies the alien, the agency refers the alien to the National Visa Center, which handles the processing of the application. See U.S. Dep't of State, After Your Petition is Approved, https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/after-petition-approved.html (last visited May 24, 2018); see also 8 U.S.C. §§ 1201(a)(1), 1202(a). Upon completing an application, paying a fee, and submitting supporting documents, the applicant is eligible for an interview. See U.S. Dep't of State, Interview, https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/interview.html (last visited May 24, 2018); see also 8 U.S.C. § 1202(b). As described below, the interview is the final step the applicant must take. There is no dispute that plaintiffs complied with the preceding steps.

7. Chapter 9, Section 504.9-2 of the Foreign Affairs Manual ("FAM") mandates that the Consular Officers who reviewed the approved plaintiffs-beneficiaries' applications and interviewed them were required to do one of two things after the interview: issue or refuse their visas.[3] There was no third option. See id. ("Once an application has been executed, you must either issue the visa or refuse it. You cannot temporarily refuse, suspend, or hold the visa for future action. If you refuse the visa, you must inform the applicant of the provisions of law on

[3] See Am. Acad. of Religion v. Chertoff, 463 F. Supp. 2d 400, 421 (S.D.N.Y. 2006) (There is no doubt that the Executive has "wide latitude" to grant or deny a visa application, but that discretion "does not include the authority to refuse to adjudicate a visa application.")

which the refusal is based, and of any statutory provision under which administrative relief is available."). Chapter 9, Section 504.1-3(h) confirms this binary choice: "[t]here are no exceptions to the rule that once a visa application has been properly completed and executed before a consular officer, a visa must be either issued or refused."

8. That same section also makes clear that Consular Officers must issue visas promptly: "any alien to whom a visa is not issued by the end of the working day on which the application is made, or by the end of the next working day if it is normal post procedure to issue visas to some or all applicants the following day, must be found ineligible under one or more provisions of [the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et. seq*. ("INA")]." Id.

9. These provisions in the FAM draw on State Department regulations. See 22 C.F.R. § 41.121 ("When a visa application has been properly completed and executed in accordance with the provisions of the INA and the implementing regulations, the consular officer must either issue or refuse the visa."); 22 C.F.R. § 42.81.

10. The Government explains that the basis for a visa refusal generally falls into one of two broad categories. First, a reviewing consular officer may determine that an applicant is ineligible on one of the many grounds provided in the INA, such as health-related concerns, conviction for certain crimes, failure to demonstrate proof of adequate financial support in the United States, or fraud in the visa process. See generally 8 U.S.C. §1182.

11. Second, a reviewing consular officer may determine that he does not have sufficient information to finalize his decision. When a consular officer makes that determination, he must refuse the application pursuant to INA § 221(g), 8 U.S.C. § 1201(g), which provides

> No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law, (2) the application fails to comply with the provisions

> of this chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law . . .

8 U.S.C.A. § 1201(g). Refusals in this second category can be further divided into two groups: in the first group are those applicants whose application was incomplete, requiring the applicant to take additional affirmative steps before a consular officer can complete his review. In the second group are applicants with complete applications that require additional administrative processing steps outside of their control. The Government has submitted an affidavit stating that each of the approved plaintiffs-beneficiaries had their visas refused for "administrative processing."

12. Regardless of the basis for refusal, as described above, all applicants whose visa applications are denied must be given a document at the end of their interview informing them both of their denial and its statutory basis. See 9 FAM § 504.9-2. The Government describes this document as intended to help applicants with any next steps they choose to take, but claims that the actual decisions of reviewing consular officers to refuse visas are reflected in entries made in the State Department's electronic Consular Consolidated Database ("CCD"), and that those entries – not the documents provided to applicants – control the outcome of visa applications.

13. The Consular Officers had a non-discretionary duty to either issue or deny each applicant's visa at or promptly after his interview. The Government does not dispute this. Nor does the Government dispute that approved plaintiffs-beneficiaries received approval notices, and that none received refusal notices until after the effective date of Proclamation 9645. The Government acknowledges that this practice was "inconsistent with [State] Department policy."

14. Plaintiffs argue that the approval notices should be interpreted as issued visas. For the reasons that follow, the Court agrees.

15. First, the Consular Officers provided the approval notices when the applicable regulations and FAM provisions mandated that Consular Officers either issue or refuse their visas. The timing suggests that the notice be categorized as one or the other.

16. Second, between the two options, the plain text of the approval notices ("your visa has been approved") obviously indicates issuance, not refusal.

17. Third, during or immediately after their interviews, none of the approved plaintiffs-beneficiaries received refusal notices, as the FAM required if they were, in fact, refused.

18. Fourth, the Government represents (and plaintiffs do not dispute), that Consular Officers in Djibouti did not provide an approval notice if an applicant "still had work to do to establish eligibility for a visa and/or [] provide all required supporting documentation." Instead, in those "situations, the consular section would provide the applicant with a refusal letter . . ." The Government claims (and plaintiffs dispute), that the Embassy issued approval notices when further work remained to be done on an application, but that work was outside the knowledge or control of an applicant. In other words, although the Embassy in Djibouti deviated from State Department procedure, it still adjudicated applications. The Government concedes that the Embassy provided refusal notices to some applicants, but not others (like approved plaintiffs-beneficiaries). In light of that concession, there is no logical reason to conclude that approval notices should be treated as refusal notices. The Embassy clearly knew how to issue the latter.

19. Fifth, and perhaps most significantly, the approval notices make no mention of any outstanding "administrative processing" – let alone any substantive processing – that could result in a refusal. To the contrary, instead of simply being silent as to remaining steps, the

approval notices specifically single out "printing," therefore making clear that a ministerial obstacle – not a substantive one – prevented approved plaintiffs-beneficiaries from having their actual visas in hand.

20. Because the Court interprets the approval notices provided by the Consular Officers as issued visas, they attract the protection of Section 6(c) of Proclamation 9645. That provision states that issued visas cannot be revoked pursuant to the proclamation.[4] The approval notices were simply temporary substitutes for the printed visas Section 6(c) intended to shield from revocation.[5]

21. At oral argument, the Government acknowledged that future visa applicants from Yemen (including approved plaintiffs-beneficiaries, if they choose to reapply) will not be issued a visa unless they are "eligible to avail themselves of one of the limited exceptions in the [P]roclamation." Plaintiffs also claimed that only two applicant waivers (which permit the entry of foreign nationals for whom entry is otherwise suspended) to Proclamation 9645 have been issued in Djibouti.[6] In light of the implementation of Proclamation 9645, approved plaintiffs-beneficiaries do not have an adequate remedy other than the prompt printing of their visas.

22. Because 1) the Consular Officers were required to act under a plainly defined duty to issue or refuse the visas; 2) in granting the approval notices, the officers issued approved

[4] Because the Court concludes that approved plaintiffs-beneficiaries had already been issued visas, their refusal notices are interpreted as revocations.

[5] At oral argument and in their motion papers, plaintiffs argued that the Consular Officers in Djibouti were ill-equipped to handle the influx of visa applicants fleeing war-torn Yemen and could not issue visas as promptly as required by the Foreign Affairs Manual. In response, Consular Officers implemented a makeshift solution to the problem, and provided "approval notices" to plaintiffs-beneficiaries as stand-ins for properly printed visas. Plaintiffs have submitted no evidence to substantiate this explanation, so the Court does not find it as fact. The Government states "the consular section at the Embassy in Djibouti [issued approval notices] for the majority of immigrant visa applicants who applied there," from at least June 2015 until January 2018.

[6] Although the Court does not find this as fact, the Government did not dispute the claim.

plaintiffs-beneficiaries' visas; 3) approved plaintiffs-beneficiaries accordingly had a clear right to not have their visas revoked pursuant to Proclamation 9645; and 4) the only adequate remedy is to provide approved plaintiffs-beneficiaries their printed, issued visas, plaintiffs have demonstrated a clear likelihood of success on their petition for a writ of mandamus.

23. The Government raises several arguments, each of which the Court rejects.

24. First, the Government claims that none of the approved plaintiffs-beneficiaries ever had their visa applications approved, and that the approval notices were erroneously given to approved plaintiffs-beneficiaries, inconsistent with State Department policy. Acknowledging that the rationale behind the Embassy's issuance of the approval notices is "not completely clear," the Government suggests that some Consular Officers intended the notices to encourage applicants to continue checking the listed website for updates on their applications. The Government notes that the Embassy in Djibouti had no correspondence unit to handle routine communication with visa applicants.

25. This explanation makes no sense. The Government offers no reasonable explanation for why Consular Officers, in seeking to remind applicants to check their visa status, would have provided approval notices to those whose visas had actually been refused. Moreover, if the Consular Officers merely intended to prod applicants to check the status of applications in administrative processing, they could have provided a communication with any number of formulations besides, "[y]our visa has been approved" and that the only action remaining was to print it.

26. Second, the Government claims the State Department has no record that any approved plaintiffs-beneficiaries were issued or approved a visa, and that if plaintiffs had checked the website referenced on the approval notices, they would have seen that their visas

had not been approved. The Government has submitted an affidavit stating that contemporaneously with providing the approval notices, the Consular Officers made entries in the CCD documenting that approved plaintiffs-beneficiaries had, in fact, been refused.

27. The Government has offered no reasonable explanation of why Consular Officers would deliver approval notices with crystal-clear language to applicants, and then turn to their computers and refuse the same applications. Even if the Court were to credit this claim, however, it would not help the Government in the face of the issued approval notices.

28. Third, the Government puts forth that the decision memorialized in State Department records, and not the approval notice, controls the status of an application. But the Government has pointed to no authority in support of this argument, nor to any authority suggesting that the approval notices, or any other documents provided after interviews, should not be afforded weight.

29. Finally, the Government contends that when, in January 2018, the State Department learned that the consular section in Djibouti had been providing approval notices, it ordered an immediate stop to the policy, and directed Consular Officers to provide applicants with refusal notices, where appropriate. This is irrelevant to deciding how the approval notices, which approved plaintiffs-beneficiaries received before any change in policy, should be treated.

30. The balance of hardships tips overwhelmingly in favor of plaintiffs. The Government has already reviewed approved plaintiffs-beneficiaries applications, scheduled and conducted interviews, and approved their visas. The relief mandated by this order only requires the Government to undertake the printing of the visas which the approval notice said would occur. On the other hand, in the absence of injunctive relief, approved plaintiffs-beneficiaries will remain in their untenable position.

31. The public interest is served by the United States adhering to the terms of the Proclamation and honoring its representations to prospective immigrants. Approved plaintiffs-beneficiaries complied with the extensive requirements of the visa-application process, and received approval notices after appropriate review.

32. Notwithstanding this ruling, the ordered relief may be a pyrrhic victory for plaintiffs. The Government has broad authority to revoke visas. See 8 U.S.C. § 1201; 22 C.F.R. § 41.122. However, the Government chose to limit that authority by including section 6(c) in Proclamation 9645, which bars it from doing exactly what it did here. The Government may respond to this decision by revoking approved-plaintiffs beneficiary's visas without reference to Proclamation 9645. That is a decision placed with the Executive, not the Courts, and nothing in this decision should be interpreted to limit its power to do so.

CONCLUSION

Plaintiffs' motion for a preliminary injunction is granted and the preliminary injunction will issue separately.

SO ORDERED.

_____
U.S.D.J.

Dated: Brooklyn, New York
May 27, 2018

Exhibit L

Gmail by Google

Shabnam Lotfi <shabnam@lotfilegal.com>

Fwd: YRV2016[redacted]

[redacted] Mon, Feb 5, 2018 at 5:46 PM
To: shabnam@lotfilegal.com

Soheil Vazehrad, RDH,
[redacted]

Begin forwarded message:

From: atefe motevally [redacted]
Date: January 5, 2018 at 10:06:59 PM PST
To: Soheil Vazehrad [redacted]
Subject: Fw: YRV2016[redacted]
Reply-To: atefe motevally [redacted]

On Thursday, January 4, 2018 10:47 AM, "Yerevan, Iran IV" <IranIVYerevan@state.gov> wrote:

Consular Section of the
Embassy of the United States of America
Yerevan, Armenia

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

■ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

☐ The consular officer is reviewing your eligibility for a waiver. To approve your waiver, the consular officer must determine that denying your entry would cause undue hardship, that

your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your application will remain refused under Section 212(f). You will be contacted with a final determination on your application as soon as practicable.

Regards,

Immigrant Visa Unit

متقاضی گرامی،

به اطلاع می رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

■ با در نظر گرفتن مقررات این بیانیه، درپرونده شما این محدودیت چشم پوشی نخواهد شد.
□ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر،
بخش ویزای مهاجرتی

Privacy/PII
This email is UNCLASSIFIED.

image002.jpg
4K

Exhibit M

From: Yerevan, Iran IV [mailto:IranIVYerevan@state.gov]
Sent: Sunday, December 17, 2017 9:21 PM
To: Anthony Ravani <[redacted]>
Subject: RE: YRV2016[redacted]

Dear inquirer,

Unfortunately, your case is not eligible for a waiver under Presidential Proclamation 9645. This refusal under Section 212(f) of the Immigration and Nationality Act applies only to the current visa application. Please be advised that Presidential Proclamation 9645 currently restricts issuance of most visas to nationals of Iran and seven other countries.

Consular Section | Immigrant Visa Unit
U.S. Embassy Yerevan | 1 American Ave, Yerevan 0082, Armenia

This email is UNCLASSIFIED.

From: Anthony Ravani [mailto:[redacted]]
Sent: Friday, December 15, 2017 10:38 PM
To: Yerevan, Iran IV
Subject: RE: YRV2016[redacted]

Dear officer,

Based on the following FAM procedure can you please fully explain why you determined the applicant is not eligible for a waiver.

9 FAM 504.11-3 (U) REFUSAL PROCEDURES

(U) If you determine that the applicant is not eligible for a visa, the following procedures should be followed.

9 FAM 504.11-3(A)(1) (U) Inform the Alien Orally and in Writing

b. **(U)** INA 212(b) requires officers to provide timely written notice that the alien is inadmissible. The written notification should provide the alien (and the attorney of record) with:

(1) **(U)** The provision(s) of law on which the refusal is based;

(2) **(U)** The factual basis for the refusal (unless such information is classified) please also see "Exceptions to Notice Requirements" below;

Sincerely,

Anthony B. Ravani,

Principal Attorney at Law

Immigration & Business Law

Anywhere in USA

Phone: [redacted]

[redacted]

[redacted]

FAX: [redacted]

Lotus Law Group, PLLC

800 Fifth Ave., Suite 400 300 Spectrum Center Dr., Suite 400

Seattle, WA. 98104 AND Irvine, CA. 92618

www.Lotus-Lawgroup.com

Please be advised that in all my work I follow the USA laws and all appropriate Regulations and Policies relevant to your inquiry.

From: Yerevan, Iran IV [mailto:IranIVYerevan@state.gov]
Sent: Thursday, December 14, 2017 11:48 PM
To: Anthony Ravani [redacted]
Subject: YRV2016[redacted]

Consular Section of the

Embassy of the United States of America

Yerevan, Armenia

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

Please see the letter attached.

■ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

☐ The consular officer is reviewing your eligibility for a waiver. To approve your waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your application will remain refused under Section 212(f). You will be contacted with a final determination on your application as soon as practicable.

Regards,

Immigrant Visa Unit

متقاضی گرامی،

به اطلاع می رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

■ با در نظر گرفتن مقررات این بیانیه، درپرونده شما این محدودیت چشم پوشی نخواهد شد.

□ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر،

بخش ویزای مهاجرتی

Privacy/PII

This email is UNCLASSIFIED.

2 attachments

[redacted]png
13K

[redacted].pdf
774K

Exhibit N

mail.com

RE: Fwd: RDJ2017[redacted]- HEIDARYAN, EHSAN

From: "Immigration, Rio" <ImmigrationRio@state.gov>
To: "Heidaryan, Ehsan" <[redacted]>
Cc: "[redacted]" <[redacted]>
Date: Dec 27, 2017 2:13:57 PM

Dear Sir,

Unfortunately your immigrant visa case is refused under Presidential Proclamation 9645 and now considered closed. Do not need to fill out the questionnaire we sent by email.

Atenciosamente,

Best regards,

Immigrant Visa Unit

United States Consulate General

Rio de Janeiro - RJ –Brazil

br

Official

UNCLASSIFIED

From: Immigration, Rio
Sent: Wednesday, December 27, 2017 10:16 AM
To: 'Heidaryan, Ehsan'
Cc: [redacted]
Subject: RE: Fwd: RDJ2017[redacted] HEIDARYAN, EHSAN

Dear Sir,

You must download cerenade extension in your computer to open the form. After fill out you may send it by mail.

Atenciosamente,

Best regards,

Immigrant Visa Unit

United States Consulate General

Rio de Janeiro - RJ –Brazil

br

Official

UNCLASSIFIED

From: Heidaryan, Ehsan [mailto:[redacted]
Sent: Tuesday, December 26, 2017 1:09 PM
To: Immigration, Rio
Cc: [redacted]
Subject: Re: Fwd: RDJ2017[redacted]- HEIDARYAN, EHSAN

Dear Sir/Madam,

Many thanks for your message!

1. Due to information provided by my case officer on the day of the interview, it supposed that email would be sent to me who I am the principal applicant. But it was sent to my wife who is my dependent! By the way, it is OK and please in the future messages consider me as the primary receiver of your message and put her in the copy.

2. Your email was contained *DS5535.far* which is weird to me, would you please let me know how to open it?

3. Regarding returning the completed form, should I upload it to my dropbox and provide you with its link or you have a particular account for that?

Kind regards,
Ehsan Heidaryan
RDJ2017[redacted]

Sent: Tuesday, December 26, 2017 at 9:58 AM
From: "Liliam Festi" [redacted]
To: [redacted]
Subject: Fwd: RDJ2017[redacted] HEIDARYAN, EHSAN

Enviado do meu iPhone

Início da mensagem encaminhada:

De: "Immigration, Rio" <ImmigrationRio@state.gov>
Data: 26 de dezembro de 2017 09:43:18 BRST
Para: "[redacted]
Assunto: RDJ2017[redacted] HEIDARYAN, EHSAN

Dear Immigrant Visa Applicant,

Please find the attached document requiring review and completion by the principal applicant. Please complete the form in English. Once you have completed the form, print it and send to us by drop box or mail..

Be advised that incomplete or unclear responses will delay the processing of your case.

Atenciosamente,

Best regards,

Immigrant Visa Unit

United States Consulate General

Rio de Janeiro - RJ –Brazil

br

Attachments

- [redacted].jpg
- [redacted].png
- [redacted].png
- [redacted].png
- [redacted].png
- [redacted].jpg
- [redacted].jpg

Exhibit A

Presidential Documents

Proclamation 9645 of September 24, 2017

Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats

By the President of the United States of America

A Proclamation

In Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), on the recommendations of the Secretary of Homeland Security and the Attorney General, I ordered a worldwide review of whether, and if so what, additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat. This was the first such review of its kind in United States history. As part of the review, the Secretary of Homeland Security established global requirements for information sharing in support of immigration screening and vetting. The Secretary of Homeland Security developed a comprehensive set of criteria and applied it to the information-sharing practices, policies, and capabilities of foreign governments. The Secretary of State thereafter engaged with the countries reviewed in an effort to address deficiencies and achieve improvements. In many instances, those efforts produced positive results. By obtaining additional information and formal commitments from foreign governments, the United States Government has improved its capacity and ability to assess whether foreign nationals attempting to enter the United States pose a security or safety threat. Our Nation is safer as a result of this work.

Despite those efforts, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, has determined that a small number of countries—out of nearly 200 evaluated—remain deficient at this time with respect to their identity-management and information-sharing capabilities, protocols, and practices. In some cases, these countries also have a significant terrorist presence within their territory.

As President, I must act to protect the security and interests of the United States and its people. I am committed to our ongoing efforts to engage those countries willing to cooperate, improve information-sharing and identity-management protocols and procedures, and address both terrorism-related and public-safety risks. Some of the countries with remaining inadequacies face significant challenges. Others have made strides to improve their protocols and procedures, and I commend them for these efforts. But until they satisfactorily address the identified inadequacies, I have determined, on the basis of recommendations from the Secretary of Homeland Security and other members of my Cabinet, to impose certain conditional restrictions and limitations, as set forth more fully below, on entry into the United States of nationals of the countries identified in section 2 of this proclamation.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that, absent the measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States of persons described in section 2 of this proclamation would be detrimental to the

interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Policy and Purpose.* (a) It is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats. Screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. They enhance our ability to detect foreign nationals who may commit, aid, or support acts of terrorism, or otherwise pose a safety threat, and they aid our efforts to prevent such individuals from entering the United States.

(b) Information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. Governments manage the identity and travel documents of their nationals and residents. They also control the circumstances under which they provide information about their nationals to other governments, including information about known or suspected terrorists and criminal-history information. It is, therefore, the policy of the United States to take all necessary and appropriate steps to encourage foreign governments to improve their information-sharing and identity-management protocols and practices and to regularly share identity and threat information with our immigration screening and vetting systems.

(c) Section 2(a) of Executive Order 13780 directed a ''worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat.'' That review culminated in a report submitted to the President by the Secretary of Homeland Security on July 9, 2017. In that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, developed a baseline for the kinds of information required from foreign governments to support the United States Government's ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat. That baseline incorporates three categories of criteria:

(i) *Identity-management information*. The United States expects foreign governments to provide the information needed to determine whether individuals seeking benefits under the immigration laws are who they claim to be. The identity-management information category focuses on the integrity of documents required for travel to the United States. The criteria assessed in this category include whether the country issues electronic passports embedded with data to enable confirmation of identity, reports lost and stolen passports to appropriate entities, and makes available upon request identity-related information not included in its passports.

(ii) *National security and public-safety information.* The United States expects foreign governments to provide information about whether persons who seek entry to this country pose national security or public-safety risks. The criteria assessed in this category include whether the country makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request, whether the country provides passport and national-identity document exemplars, and whether the country impedes the United States Government's receipt of information about passengers and crew traveling to the United States.

(iii) *National security and public-safety risk assessment.* The national security and public-safety risk assessment category focuses on national security risk indicators. The criteria assessed in this category include whether the country is a known or potential terrorist safe haven, whether it is

a participant in the Visa Waiver Program established under section 217 of the INA, 8 U.S.C. 1187, that meets all of its requirements, and whether it regularly fails to receive its nationals subject to final orders of removal from the United States.

(d) The Department of Homeland Security, in coordination with the Department of State, collected data on the performance of all foreign governments and assessed each country against the baseline described in subsection (c) of this section. The assessment focused, in particular, on identity management, security and public-safety threats, and national security risks. Through this assessment, the agencies measured each country's performance with respect to issuing reliable travel documents and implementing adequate identity-management and information-sharing protocols and procedures, and evaluated terrorism-related and public-safety risks associated with foreign nationals seeking entry into the United States from each country.

(e) The Department of Homeland Security evaluated each country against the baseline described in subsection (c) of this section. The Secretary of Homeland Security identified 16 countries as being ''inadequate'' based on an analysis of their identity-management protocols, information-sharing practices, and risk factors. Thirty-one additional countries were classified ''at risk'' of becoming ''inadequate'' based on those criteria.

(f) As required by section 2(d) of Executive Order 13780, the Department of State conducted a 50-day engagement period to encourage all foreign governments, not just the 47 identified as either ''inadequate'' or ''at risk,'' to improve their performance with respect to the baseline described in subsection (c) of this section. Those engagements yielded significant improvements in many countries. Twenty-nine countries, for example, provided travel document exemplars for use by Department of Homeland Security officials to combat fraud. Eleven countries agreed to share information on known or suspected terrorists.

(g) The Secretary of Homeland Security assesses that the following countries continue to have ''inadequate'' identity-management protocols, information-sharing practices, and risk factors, with respect to the baseline described in subsection (c) of this section, such that entry restrictions and limitations are recommended: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The Secretary of Homeland Security also assesses that Iraq did not meet the baseline, but that entry restrictions and limitations under a Presidential proclamation are not warranted. The Secretary of Homeland Security recommends, however, that nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States. In reaching these conclusions, the Secretary of Homeland Security considered the close cooperative relationship between the United States and the democratically elected government of Iraq, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combating the Islamic State of Iraq and Syria (ISIS).

(h) Section 2(e) of Executive Order 13780 directed the Secretary of Homeland Security to ''submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means.'' On September 15, 2017, the Secretary of Homeland Security submitted a report to me recommending entry restrictions and limitations on certain nationals of 7 countries determined to be ''inadequate'' in providing such information and in light of other factors discussed in the report. According to the report, the recommended restrictions would help address the threats that the countries' identity-management protocols, information-sharing inadequacies, and other risk factors pose to the security and welfare of the United

States. The restrictions also encourage the countries to work with the United States to address those inadequacies and risks so that the restrictions and limitations imposed by this proclamation may be relaxed or removed as soon as possible.

(i) In evaluating the recommendations of the Secretary of Homeland Security and in determining what restrictions to impose for each country, I consulted with appropriate Assistants to the President and members of the Cabinet, including the Secretaries of State, Defense, and Homeland Security, and the Attorney General. I considered several factors, including each country's capacity, ability, and willingness to cooperate with our identity-management and information-sharing policies and each country's risk factors, such as whether it has a significant terrorist presence within its territory. I also considered foreign policy, national security, and counterterrorism goals. I reviewed these factors and assessed these goals, with a particular focus on crafting those country-specific restrictions that would be most likely to encourage cooperation given each country's distinct circumstances, and that would, at the same time, protect the United States until such time as improvements occur. The restrictions and limitations imposed by this proclamation are, in my judgment, necessary to prevent the entry of those foreign nationals about whom the United States Government lacks sufficient information to assess the risks they pose to the United States. These restrictions and limitations are also needed to elicit improved identity-management and information-sharing protocols and practices from foreign governments; and to advance foreign policy, national security, and counterterrorism objectives.

(ii) After reviewing the Secretary of Homeland Security's report of September 15, 2017, and accounting for the foreign policy, national security, and counterterrorism objectives of the United States, I have determined to restrict and limit the entry of nationals of 7 countries found to be ''inadequate'' with respect to the baseline described in subsection (c) of this section: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. These restrictions distinguish between the entry of immigrants and nonimmigrants. Persons admitted on immigrant visas become lawful permanent residents of the United States. Such persons may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants. The United States affords lawful permanent residents more enduring rights than it does to nonimmigrants. Lawful permanent residents are more difficult to remove than nonimmigrants even after national security concerns arise, which heightens the costs and dangers of errors associated with admitting such individuals. And although immigrants generally receive more extensive vetting than nonimmigrants, such vetting is less reliable when the country from which someone seeks to emigrate exhibits significant gaps in its identity-management or information-sharing policies, or presents risks to the national security of the United States. For all but one of those 7 countries, therefore, I am restricting the entry of all immigrants.

(iii) I am adopting a more tailored approach with respect to nonimmigrants, in accordance with the recommendations of the Secretary of Homeland Security. For some countries found to be ''inadequate'' with respect to the baseline described in subsection (c) of this section, I am restricting the entry of all nonimmigrants. For countries with certain mitigating factors, such as a willingness to cooperate or play a substantial role in combatting terrorism, I am restricting the entry only of certain categories of nonimmigrants, which will mitigate the security threats presented by their entry into the United States. In those cases in which future cooperation seems reasonably likely, and accounting for foreign policy, national security, and counterterrorism objectives, I have tailored the restrictions to encourage such improvements.

(i) Section 2(e) of Executive Order 13780 also provided that the ''Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which

any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States.'' The Secretary of Homeland Security determined that Somalia generally satisfies the information-sharing requirements of the baseline described in subsection (c) of this section, but its government's inability to effectively and consistently cooperate, combined with the terrorist threat that emanates from its territory, present special circumstances that warrant restrictions and limitations on the entry of its nationals into the United States. Somalia's identity-management deficiencies and the significant terrorist presence within its territory make it a source of particular risks to the national security and public safety of the United States. Based on the considerations mentioned above, and as described further in section 2(h) of this proclamation, I have determined that entry restrictions, limitations, and other measures designed to ensure proper screening and vetting for nationals of Somalia are necessary for the security and welfare of the United States.

(j) Section 2 of this proclamation describes some of the inadequacies that led me to impose restrictions on the specified countries. Describing all of those reasons publicly, however, would cause serious damage to the national security of the United States, and many such descriptions are classified.

Sec. 2. *Suspension of Entry for Nationals of Countries of Identified Concern.* The entry into the United States of nationals of the following countries is hereby suspended and limited, as follows, subject to categorical exceptions and case-by-case waivers, as described in sections 3 and 6 of this proclamation:

(a) *Chad.*

(i) The government of Chad is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Chad has shown a clear willingness to improve in these areas. Nonetheless, Chad does not adequately share public-safety and terrorism-related information and fails to satisfy at least one key risk criterion. Additionally, several terrorist groups are active within Chad or in the surrounding region, including elements of Boko Haram, ISIS-West Africa, and al-Qa'ida in the Islamic Maghreb. At this time, additional information sharing to identify those foreign nationals applying for visas or seeking entry into the United States who represent national security and public-safety threats is necessary given the significant terrorism-related risk from this country.

(ii) The entry into the United States of nationals of Chad, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(b) *Iran.*

(i) Iran regularly fails to cooperate with the United States Government in identifying security risks, fails to satisfy at least one key risk criterion, is the source of significant terrorist threats, and fails to receive its nationals subject to final orders of removal from the United States. The Department of State has also designated Iran as a state sponsor of terrorism.

(ii) The entry into the United States of nationals of Iran as immigrants and as nonimmigrants is hereby suspended, except that entry by such nationals under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals should be subject to enhanced screening and vetting requirements.

(c) *Libya.*

(i) The government of Libya is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding on that cooperation, including in the areas of immigration and border management. Libya, nonetheless, faces significant challenges in sharing several types of information, including public-safety

and terrorism-related information necessary for the protection of the national security and public safety of the United States. Libya also has significant inadequacies in its identity-management protocols. Further, Libya fails to satisfy at least one key risk criterion and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. The substantial terrorist presence within Libya's territory amplifies the risks posed by the entry into the United States of its nationals.

(ii) The entry into the United States of nationals of Libya, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(d) *North Korea.*

(i) North Korea does not cooperate with the United States Government in any respect and fails to satisfy all information-sharing requirements.

(ii) The entry into the United States of nationals of North Korea as immigrants and nonimmigrants is hereby suspended.

(e) *Syria.*

(i) Syria regularly fails to cooperate with the United States Government in identifying security risks, is the source of significant terrorist threats, and has been designated by the Department of State as a state sponsor of terrorism. Syria has significant inadequacies in identity-management protocols, fails to share public-safety and terrorism information, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Syria as immigrants and nonimmigrants is hereby suspended.

(f) *Venezuela.*

(i) Venezuela has adopted many of the baseline standards identified by the Secretary of Homeland Security and in section 1 of this proclamation, but its government is uncooperative in verifying whether its citizens pose national security or public-safety threats. Venezuela's government fails to share public-safety and terrorism-related information adequately, fails to satisfy at least one key risk criterion, and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. There are, however, alternative sources for obtaining information to verify the citizenship and identity of nationals from Venezuela. As a result, the restrictions imposed by this proclamation focus on government officials of Venezuela who are responsible for the identified inadequacies.

(ii) Notwithstanding section 3(b)(v) of this proclamation, the entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures—including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations—and their immediate family members, as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended. Further, nationals of Venezuela who are visa holders should be subject to appropriate additional measures to ensure traveler information remains current.

(g) *Yemen.*

(i) The government of Yemen is an important and valuable counterterrorism partner, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Yemen, nonetheless, faces significant identity-management challenges, which are amplified by the notable terrorist presence within its territory. The government of Yemen fails to satisfy critical identity-management requirements, does not share public-safety and terrorism-related information adequately, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(h) *Somalia.*

(i) The Secretary of Homeland Security's report of September 15, 2017, determined that Somalia satisfies the information-sharing requirements of the baseline described in section 1(c) of this proclamation. But several other considerations support imposing entry restrictions and limitations on Somalia. Somalia has significant identity-management deficiencies. For example, while Somalia issues an electronic passport, the United States and many other countries do not recognize it. A persistent terrorist threat also emanates from Somalia's territory. The United States Government has identified Somalia as a terrorist safe haven. Somalia stands apart from other countries in the degree to which its government lacks command and control of its territory, which greatly limits the effectiveness of its national capabilities in a variety of respects. Terrorists use under-governed areas in northern, central, and southern Somalia as safe havens from which to plan, facilitate, and conduct their operations. Somalia also remains a destination for individuals attempting to join terrorist groups that threaten the national security of the United States. The State Department's 2016 Country Reports on Terrorism observed that Somalia has not sufficiently degraded the ability of terrorist groups to plan and mount attacks from its territory. Further, despite having made significant progress toward formally federating its member states, and its willingness to fight terrorism, Somalia continues to struggle to provide the governance needed to limit terrorists' freedom of movement, access to resources, and capacity to operate. The government of Somalia's lack of territorial control also compromises Somalia's ability, already limited because of poor record-keeping, to share information about its nationals who pose criminal or terrorist risks. As a result of these and other factors, Somalia presents special concerns that distinguish it from other countries.

(ii) The entry into the United States of nationals of Somalia as immigrants is hereby suspended. Additionally, visa adjudications for nationals of Somalia and decisions regarding their entry as nonimmigrants should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States.

Sec. 3. *Scope and Implementation of Suspensions and Limitations.* (a) *Scope.* Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspensions of and limitations on entry pursuant to section 2 of this proclamation shall apply only to foreign nationals of the designated countries who:

(i) are outside the United States on the applicable effective date under section 7 of this proclamation;

(ii) do not have a valid visa on the applicable effective date under section 7 of this proclamation; and

(iii) do not qualify for a visa or other valid travel document under section 6(d) of this proclamation.

(b) *Exceptions.* The suspension of entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any foreign national who is admitted to or paroled into the United States on or after the applicable effective date under section 7 of this proclamation;

(iii) any foreign national who has a document other than a visa—such as a transportation letter, an appropriate boarding foil, or an advance parole document—valid on the applicable effective date under section 7 of this proclamation or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission;

(iv) any dual national of a country designated under section 2 of this proclamation when the individual is traveling on a passport issued by a non-designated country;

(v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C–2 visa for travel to the United Nations, or G–1, G–2, G–3, or G–4 visa; or

(vi) any foreign national who has been granted asylum by the United States; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

(c) *Waivers.* Notwithstanding the suspensions of and limitations on entry set forth in section 2 of this proclamation, a consular officer, or the Commissioner, United States Customs and Border Protection (CBP), or the Commissioner's designee, as appropriate, may, in their discretion, grant waivers on a case-by-case basis to permit the entry of foreign nationals for whom entry is otherwise suspended or limited if such foreign nationals demonstrate that waivers would be appropriate and consistent with subsections (i) through (iv) of this subsection. The Secretary of State and the Secretary of Homeland Security shall coordinate to adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants.

(i) A waiver may be granted only if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

(A) denying entry would cause the foreign national undue hardship;

(B) entry would not pose a threat to the national security or public safety of the United States; and

(C) entry would be in the national interest.

(ii) The guidance issued by the Secretary of State and the Secretary of Homeland Security under this subsection shall address the standards, policies, and procedures for:

(A) determining whether the entry of a foreign national would not pose a threat to the national security or public safety of the United States;

(B) determining whether the entry of a foreign national would be in the national interest;

(C) addressing and managing the risks of making such a determination in light of the inadequacies in information sharing, identity management, and other potential dangers posed by the nationals of individual countries subject to the restrictions and limitations imposed by this proclamation;

(D) assessing whether the United States has access, at the time of the waiver determination, to sufficient information about the foreign national to determine whether entry would satisfy the requirements of subsection (i) of this subsection; and

(E) determining the special circumstances that would justify granting a waiver under subsection (iv)(E) of this subsection.

(iii) Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa adjudication process will be effective both for the issuance of a visa and for any subsequent entry on that visa, but will leave unchanged all other requirements for admission or entry.

(iv) Case-by-case waivers may not be granted categorically, but may be appropriate, subject to the limitations, conditions, and requirements set forth under subsection (i) of this subsection and the guidance issued under subsection (ii) of this subsection, in individual circumstances such as the following:

(A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date under section 7 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;

(B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date under section 7 of this proclamation for work, study, or other lawful activity;

(C) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;

(D) the foreign national seeks to enter the United States to visit or reside with a close family member (*e.g.,* a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;

(E) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(F) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee), and the foreign national can document that he or she has provided faithful and valuable service to the United States Government;

(G) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.,* traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(H) the foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;

(I) the foreign national is traveling as a United States Government–sponsored exchange visitor; or

(J) the foreign national is traveling to the United States, at the request of a United States Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

Sec. 4. *Adjustments to and Removal of Suspensions and Limitations.* (a) The Secretary of Homeland Security shall, in consultation with the Secretary of State, devise a process to assess whether any suspensions and limitations imposed by section 2 of this proclamation should be continued, terminated, modified, or supplemented. The process shall account for whether countries have improved their identity-management and information-sharing protocols and procedures based on the criteria set forth in section 1 of this proclamation and the Secretary of Homeland Security's report of September 15, 2017. Within 180 days of the date of this proclamation, and every 180 days thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies, shall submit a report with recommendations to the President, through appropriate Assistants to the President, regarding the following:

(i) the interests of the United States, if any, that continue to require the suspension of, or limitations on, the entry on certain classes of nationals of countries identified in section 2 of this proclamation and whether the restrictions and limitations imposed by section 2 of this proclamation should be continued, modified, terminated, or supplemented; and

(ii) the interests of the United States, if any, that require the suspension of, or limitations on, the entry of certain classes of nationals of countries not identified in this proclamation.

(b) The Secretary of State, in consultation with the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, the Director of National Intelligence, and the head of any other executive department or agency (agency) that the Secretary of State deems appropriate, shall engage the countries listed in section 2 of this proclamation, and any other countries that have information-sharing, identity-management, or risk-factor deficiencies as practicable, appropriate, and consistent with the foreign policy, national security, and public-safety objectives of the United States.

(c) Notwithstanding the process described above, and consistent with the process described in section 2(f) of Executive Order 13780, if the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, and the Director of National Intelligence, determines, at any time, that a country meets the standards of the baseline described in section 1(c) of this proclamation, that a country has an adequate plan to provide such information, or that one or more of the restrictions or limitations imposed on the entry of a country's nationals are no longer necessary for the security or welfare of the United States, the Secretary of Homeland Security may recommend to the President the removal or modification of any or all such restrictions and limitations. The Secretary of Homeland Security, the Secretary of State, or the Attorney General may also, as provided for in Executive Order 13780, submit to the President the names of additional countries for which any of them recommends any lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

Sec. 5. *Reports on Screening and Vetting Procedures.* (a) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies shall submit periodic reports to the President, through appropriate Assistants to the President, that:

(i) describe the steps the United States Government has taken to improve vetting for nationals of all foreign countries, including through improved collection of biometric and biographic data;

(ii) describe the scope and magnitude of fraud, errors, false information, and unverifiable claims, as determined by the Secretary of Homeland Security on the basis of a validation study, made in applications for immigration benefits under the immigration laws; and

(iii) evaluate the procedures related to screening and vetting established by the Department of State's Bureau of Consular Affairs in order to enhance the safety and security of the United States and to ensure sufficient review of applications for immigration benefits.

(b) The initial report required under subsection (a) of this section shall be submitted within 180 days of the date of this proclamation; the second report shall be submitted within 270 days of the first report; and reports shall be submitted annually thereafter.

(c) The agency heads identified in subsection (a) of this section shall coordinate any policy developments associated with the reports described in subsection (a) of this section through the appropriate Assistants to the President.

Sec. 6. *Enforcement.* (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and organizations, to ensure efficient, effective, and appropriate implementation of this proclamation.

(b) In implementing this proclamation, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including those that provide an opportunity for individuals to enter the United States on the basis of a credible claim of fear of persecution or torture.

(c) No immigrant or nonimmigrant visa issued before the applicable effective date under section 7 of this proclamation shall be revoked pursuant to this proclamation.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 of January 27, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry under the terms and conditions of the visa marked revoked or marked canceled. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

(e) This proclamation shall not apply to an individual who has been granted asylum by the United States, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture. Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 7. *Effective Dates.* Executive Order 13780 ordered a temporary pause on the entry of foreign nationals from certain foreign countries. In two cases, however, Federal courts have enjoined those restrictions. The Supreme Court has stayed those injunctions as to foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States, pending its review of the decisions of the lower courts.

(a) The restrictions and limitations established in section 2 of this proclamation are effective at 3:30 p.m. eastern daylight time on September 24, 2017, for foreign nationals who:

(i) were subject to entry restrictions under section 2 of Executive Order 13780, or would have been subject to the restrictions but for section 3 of that Executive Order, and

(ii) lack a credible claim of a bona fide relationship with a person or entity in the United States.

(b) The restrictions and limitations established in section 2 of this proclamation are effective at 12:01 a.m. eastern daylight time on October 18, 2017, for all other persons subject to this proclamation, including nationals of:

(i) Iran, Libya, Syria, Yemen, and Somalia who have a credible claim of a bona fide relationship with a person or entity in the United States; and

(ii) Chad, North Korea, and Venezuela.

Sec. 8. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the national security, foreign policy, and counterterrorism interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

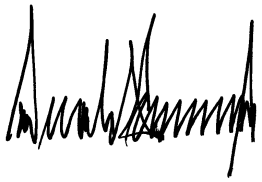
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2017–20899
Filed 9–26–17; 11:15 am]
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Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALHARBI, AHMED et al., *Plaintiffs*, v. MILLER, STEPHEN et al. *Defendants*.	Case No.: 18-cv-2435(BMC) **DECLARATION OF CHRISTOPHER RICHARDSON, ESQ.**

DECLARATION OF CHISTOPHER RICHARDSON, ESQ.

I, Christopher Richardson, Esq., do hereby declare:

1) I am a licensed attorney admitted to practice in the state of GEORGIA. Furthermore, I am a member in good standing of the bar of 643543.

2) I am over 18 years of age and if called upon to testify, I could and would competently testify to the following facts, as the same are personally known to me.

3) From 2011 to 2018, I was employed by the U.S. State of Department. My last post before resigning was at the U.S. Embassy in Madrid located at Calle de Serrano, 75 28006 Madrid, Spain and my title was American Citizens Services Chief.

4) My last day of employment was March 1, 2018. Therefore, I was employed when Executive Order 13769 and 13780 and also Presidential Proclamation 98645 were issued. I was also employed and had access to all the state department guidance, cables, sample Q's and A's and instructions regarding executing all three orders and had the opportunity to review all

those materials.

5) All of the above guidance cables, sample Q's and A's and instructions regarding executing all three orders were sent via email to consular posts, and the cable and corresponding Q's and A's were at the top center of the CAs internal homepage for 3 to 4 months.

6) I have had the opportunity to read from pages 53 and 68 of the transcript dated Thursday, May 10, 2018 from the above caption case. Specifically, I read where Mr. Amanat stated "There's no Q & A." ... "This is the first time I am hearing about that." "Certainly, there's no reference to any such document in the documents themselves that I'm giving to your honor.

7) Those statements are inaccurate. First, there was not only one version of the Q's & A's but two, one redlined as Ms. Goldberg correctly identified. Moreover, this was common knowledge in the department and several federal agencies have access to Consular information.

8) Secondly, the Q's & A's was part of the cable and was definitely referenced in the cable itself as is with all Q's & A's.

9) On page 68 I also read where the Court is inquiring about the cable "referencing several other" documents. Mr. Amanat states that the document is "classified" and there is one with "unclassified excerpts." Having seen all these documents to the best of my recollection NONE of the documents were classified.

10) I can certainly understand why the government would not want release all of them because when read together with our training, it is understood that there really is no waiver and the Supreme Court was correct to point out that the waiver is merely "window dressing."

11) As a Consular officer previously employed by the State Department my impression and interpretation of how we as officers were to apply the waiver process was as follows:

(a) They gave us a list of things and we would go down the list one by one until we were able to determine at all possible cost that the person was not eligible to even apply for the waiver. My understanding was no one is to be eligible to apply.

(b) If for some reason an applicant made it through the list and we had no choice but to determine we could find an applicant eligible to apply, regardless of the PP instructions that we had "discretion to grant the waiver," we were not allowed to exercise that discretion. We were mandated to send notice to Washington that we found this applicant eligible to apply and Washington would then make the decision to grant or deny the waiver.

12) In essence what the administration was doing was "hiding" behind the doctrine of consular non-reviewability for the benefit of issuing a Muslim ban and the same time usurping all of our authority given by both Congress and the PP by disallowing the consular officer to make a decision.

13) Approval notices like the samples attached to my declaration (Ecuador, Mexico, Djibouti, Turkey) are issued at US Embassies all over the world once a case is complete, (valid medicals received, applicant interviewed, and SAOs clearances received) while the applicant is waiting for the embassy to print the visa. This is not specific to Djibouti.

14) Even when SAOs clearance expire and needs to be updated, it can be done within 24-72 hours and the visa printed, since it is merely an update. The same hold true for the medical examination.

15) I declare under penalty of perjury of the law of New York and the United States that the foregoing is true and correct.

Dated on this June 1, 2018

Christopher Richardson, Esq.

Exhibit C

December 4, 2017 - New Court Order on Presidential Proclamation

On December 4, 2017, the U.S. Supreme Court granted the government's motions for emergency stays of preliminary injunctions issued by U.S. District Courts in the Districts of Hawaii and Maryland. The preliminary injunctions had prohibited the government from fully enforcing or implementing the entry restrictions of Presidential Proclamation 9645 (P.P.) titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats" to nationals of six countries: Chad, Iran, Libya, Syria, Yemen, and Somalia. Per the Supreme Court's orders, those restrictions will be implemented fully, in accordance with the Presidential Proclamation, around the world, beginning December 8 at open of business, local time.

The District Court injunctions did not affect implementation of entry restrictions against nationals from North Korea and Venezuela. Those individuals remain subject to the restrictions and limitations listed in the Presidential Proclamation, which went into effect at 12:01 a.m. eastern time on Wednesday, October 18, 2017, with respect to nationals of those countries.

Additional Background: The President issued Presidential Proclamation 9645 on September 24, 2017. Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were determined to be "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing

information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

Nationals of the eight countries are subject to various travel restrictions contained in the Proclamation, as outlined in the following table, subject to exceptions and waivers set forth in the Proclamation.

Country	**Nonimmigrant Visas**	**Immigrant and Diversity Visas**
Chad	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
Iran	No nonimmigrant visas except F, M, and J visas	No immigrant or diversity visas
Libya	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
North Korea	No nonimmigrant visas	No immigrant or diversity visas
Somalia		No immigrant or diversity visas
Syria	No nonimmigrant visas	No immigrant or diversity visas
Venezuela	No B-1, B-2 or B-1/B-2 visas of any kind for officials of the following government agencies Ministry of Interior, Justice, and Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People's Power Ministry of Foreign Affairs, and their immediate family members.	
Yemen	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas

We will not cancel previously scheduled visa application appointments. In accordance with the Presidential Proclamation, for nationals of the eight designated countries, a consular officer will make a determination whether an applicant otherwise eligible for a visa is exempt from the Proclamation or, if not, may be eligible for a waiver under the Proclamation and therefore issued a visa.

No visas will be revoked pursuant to the Proclamation. Individuals subject to the Proclamation who possess a valid visa or valid travel document generally will be permitted to travel to the United States, irrespective of when the visa was issued.

We will keep those traveling to the United States and our partners in the travel industry informed as we implement the order in a professional, organized, and timely way.

FAQs on the Presidential Proclamation - Department of Homeland Security

The President's Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats

Frequently Asked Questions

What are the exceptions in the Proclamation?

The following exceptions apply to nationals from all eight countries and will not be subject to any travel restrictions listed in the Proclamation:

a) Any national who was in the United States on the applicable effective date described in Section 7 of the Proclamation for that national, regardless of immigration status;

b) Any national who had a valid visa on the applicable effective date in Section 7 of the Proclamation for that national;

c) Any national who qualifies for a visa or other valid travel document under section 6(d) of the Proclamation;

d) Any lawful permanent resident (LPR) of the United States;

e) Any national who is admitted to or paroled into the United States on or after the applicable effective date in Section 7 of the Proclamation for that national;

f) Any applicant who has a document other than a visa, valid on the applicable effective date in Section 7 of the Proclamation for that applicant or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;

g) Any dual national of a country designated under the Proclamation when traveling on a passport issued by a non-designated country;

h) Any applicant traveling on a diplomatic (A-1 or A-2) or diplomatic-type visa (of any classification), NATO-1 -6 visas, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; except certain Venezuelan government officials and their family members traveling on a diplomatic-type B-1, B-2, or B1/B2 visas

i) Any applicant who has been granted asylum; admitted to the United States as a refugee; or has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Exceptions and waivers listed in the Proclamation are applicable for qualified applicants. In all visa adjudications, consular officers may seek additional information, as warranted, to determine whether an exception or a waiver is available.

If a principal visa applicant qualifies for an exception or a waiver under the Proclamation, does a derivative also get the benefit of the exception or waiver?

Each applicant, who is otherwise eligible, can only benefit from an exception or a waiver if he or she individually meets the conditions of the exception or waiver.

Does the Proclamation apply to dual nationals?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country.

Our embassies and consulates around the world will process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants who apply with a passport from a non-designated country, even if they hold dual nationality from one of the eight restricted countries.

Does this apply to U.S. Lawful Permanent Residents?

No. As stated in the Proclamation, lawful permanent residents of the United States are not affected by the Proclamation

Are there special rules for permanent residents of Canada?

Waivers may not be granted categorically to any group of nationals of the eight countries who are subject to visa restrictions pursuant to the Proclamation, but waivers may be appropriate in individual circumstances, on a case-by-case basis. The Proclamation lists several circumstances in which case-by-case waivers may be appropriate. That list includes foreign nationals who are Canadian permanent residents who apply for visas at a U.S. consular section in Canada. Canadian permanent residents should bring proof of their status to a consular officer.

A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation during each phase of the implementation and, if so, whether the applicant qualifies for an exception or a waiver.

Will you process waivers for those affected by the Proclamation? How do I qualify for a waiver to be issued a visa?

As specified in the Proclamation, consular officers may issue a visa based on a listed waiver category to nationals of countries identified in the PP on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security or public safety threat to the United States, and denial of the visa would cause undue hardship. There is no separate application for a waiver. An individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver.

What is a "close family member" for the purposes of determining if someone is eligible for a waiver?

Section 201(b) of the INA provides a definition of immediate relative, which is used to interpret the term "close family member" as used in the waiver category. This limits the relationship to spouses, children under the age of 21, and parents. While the INA definition includes only children, spouses, and parents of a U.S. citizen, in the context of the Presidential Proclamation it also includes these relationships

with LPRs and aliens lawfully admitted on a valid nonimmigrant visa in addition to U.S. citizens.

Can those needing urgent medical care in the United States still qualify for a visa?

Applicants who are otherwise qualified and seeking urgent medical care in the United States may be eligible for an exception or a waiver. Any individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might qualify the individual for an exception or waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation, and if so, whether the case qualifies for an exception or a waiver.

The Proclamation provides several examples of categories of cases that may be appropriate for consideration for a waiver, on a case-by-case basis, when in the national interest, when entry would not threaten national security or public safety, and denial would cause undue hardship. Among the examples provided, a foreign national who seeks to enter the United States for urgent medical care may be considered for a waiver.

I'm a student or short-term employee that was temporarily outside of the United States when the Proclamation went into effect. Can I return to school/work?

If you have a valid, unexpired visa and are outside the United States, you can return to school or work per the exception noted in the Proclamation.

If you do not have a valid, unexpired visa and do not qualify for an exception you will need to qualify for the visa and a waiver. An individual who wishes to apply for a nonimmigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for a waiver.

I received my immigrant visa but I haven't yet entered the United States. Can I still travel there using my immigrant visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals

of affected countries who have valid visas on the date it becomes effective.

I recently had my immigrant visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, you should proceed to submit your documentation. After receiving any required missing documentation or completion of any administrative processing, the U.S. embassy or consulate where you were interviewed will contact you with more information.

I am currently working on my case with NVC. Can I continue?

Yes. You should continue to pay fees, complete your Form DS-260 immigrant visa applications, and submit your financial and civil supporting documents to NVC. NVC will continue reviewing cases and scheduling visa interviews overseas. During the interview, a consular officer will carefully review the case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or may qualify for a waiver.

What immigrant visa classes are subject to the Proclamation?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Proclamation and restricted. All immigrant visa classifications for nationals of Venezuela are unrestricted. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or a waiver.

I sponsored my family member for an immigrant visa, and his interview appointment is after the effective date of the Proclamation. Will he still be able to receive a visa?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Presidential Proclamation and suspended. An individual who wishes to apply for an immigrant visa should apply for a

visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the applicant qualifies for an exception or a waiver.

I am applying for a K (fiancé) visa. My approved I-129 petition is only valid for four months. Can you expedite my case?

The National Visa Center already expedites all Form I-129F petitions to embassies and consulates overseas. Upon receipt of the petition and case file, the embassy or consulate will contact you with instructions on scheduling your interview appointment.

I received my Diversity Visa but I haven't yet entered the United States. Can I still travel there using my Diversity Visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

I recently had my Diversity Visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, please provide the requested information. The U.S. embassy or consulate where you were interviewed will contact you with more information.

Will my case move to the back of the line for an appointment?

No. KCC schedules appointments by Lottery Rank Number. When KCC is able to schedule your visa interview, you will receive an appointment before cases with higher Lottery Rank Numbers.

I am currently working on my case with KCC. Can I continue?

Yes. You should continue to complete your Form DS-260 immigrant visa application. KCC will continue reviewing

cases and can qualify your case for an appointment. You will be notified about the scheduling of a visa interview.

What if my spouse or child is a national of one of the countries listed, but I am not?

KCC will continue to schedule new DV interview appointments for nationals of the affected countries. A national of any of those countries applying as a principal or derivative DV applicant should disclose during the visa interview any information that might qualify the individual for a waiver/exception. Note that DV 2018 visas, including derivative visas, can only be issued during the program year, which ends September 30, 2018, and only if visa numbers remain available. There is no guarantee a visa will be available in the future for your derivative spouse or child.

What if I am a dual national or permanent resident of Canada?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country. You may apply for a DV using the passport of a non-designated country even if you selected the nationality of a designated country when you entered the lottery. Also, permanent residents of Canada applying for DVs in Montreal may be eligible for a waiver per the Proclamation, but will be considered on a case-by-case basis. If you believe one of these exceptions, or a waiver included in the Proclamation, applies to you and your otherwise current DV case has not been scheduled for interview, contact the U.S. embassy or consulate where your interview will take place/KCC at KCCDV@state.gov.

Does this Proclamation affect follow-to-join asylees?

The Proclamation does not affect V92 applicants, follow-to-join asylees.

Exhibit D

DECLARATION OF JAY GAIRSON

Pursuant to 28 U.S.C. § 1746, I declare the following to be true and correct under penalty of perjury:

1. I am the founder and managing member of Gairson Law, LLC. I practice immigration law with a focus on fraud and national security issues. My practice consists of both normal family and business cases that do not have any problems and cases that involve complicated fraud and national security issues. I have been an attorney practicing in this area of immigration law since January 5, 2011. Prior to becoming an attorney, I had worked since August 2006 at an immigration law firm as a paralegal.
2. Due to the focus of my practice, my clients are predominantly from Somalia, Ethiopia, Eritrea, Iran, Yemen, Pakistan, Syria, Libya, with the remainder mostly coming from or having visited countries with significant Muslim populations in the Middle East, South Asia, and Africa.
3. I am a frequent presenter at conferences, know your rights presentations, and podcasts and have spoken on issues ranging from Terrorism Related Inadmissibility Grounds (TRIG) under INA § 212(a)(3)(B), the Controlled Application Review and Resolution Program (CARRP), the Freedom of Information Act and Privacy Act, consular processing, administrative processing, the travel ban under INA § 212(f) including Presidential Proclamation 9645, law enforcement agencies and investigations, and other issues including immigration fraud and national security hot topics. My most recent presentation was a podcast for the American Immigration Lawyers Association titled "Advising Clients Impacted by Travel Ban 3.0".

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4. I am a regular participant on multiple immigration lawyer listservs that regularly discuss consular processing, the travel ban, and numerous other immigration issues. Using these listservs I am able to monitor larger trends in immigration processing based on the questions asked and discussions held by other lawyers, beyond the data available through my own immigration cases.

5. I have directly, by entering an appearance and communicating directly with U.S. embassies and consulates, and indirectly, by advising clients and reviewing the materials that they intended to send the embassy, represented over a hundred immigrants and non-immigrants impacted by the current implementation of the travel ban under Presidential Proclamation 9645 since December 4, 2017.

6. Based on my experience, review of the materials, and observation of trends, I advise other attorneys and my clients on how to request Presidential Proclamation 9645 § 3(c) waivers or to argue that the Proclamation does not apply to an individual case.

7. It is my considered opinion that P.P. 9645 has been haphazardly implemented by the Department of State and its consulates and embassies. Based on the inconsistent trends in P.P. 9645's implementation, it is clear that DOS has not issued consistent guidance to its consular officers or visa units and it has not provided sufficient resources for its officers and visa units to handle the additional work created. Furthermore, insufficient guidance with regards to P.P. 9645 has been made available to the public, resulting in a hodgepodge of conflicting techniques and conflicting opinions and an increase in scams guaranteeing travel ban waivers for exorbitant and unnecessary fees.

8. DOS has not publicly adopted, as required by P.P. 9645 § 3(c) substantive "guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants."

9. Prior to the Department of State's letter to Senator Chris Van Hollen on February 22, 2018, no definition of the terms "undue hardship", "national interest", or "national security or public safety" had been publicly provided.

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10. DOS has not publicly promulgated procedures for requesting or applying for a waiver to P.P. 9645. As a result the majority of U.S. embassies and consulates refuse to accept documentation from visa applicants supporting and requesting a P.P. 9645 § 3(c) waiver. In order to compensate for the lack of guidance, immigration lawyers have had to resort to a variety of techniques to ensure that documents supporting their client's case are entered into the record. These techniques include submitting waiver packets with the initial petition, submitting waiver documents to the National Visa Center, emailing waiver documents to the U.S. embassies and consulates, encouraging clients to attempt to submit documents in person, and mailing unsolicited documents to U.S. embassies and consulates requesting that a waiver be considered.

11. Despite the lack of a formal method to apply for or request a waiver, according to DOS in its letter to Senator Hollen, "Consular officers may grant waivers on a case-by-case basis *when the applicant demonstrates* to the officer's satisfaction that he or she meets the three criteria [for a waiver]." However, without being able to submit documents and legal analysis supporting a demonstration that the applicant meets the three criteria for a waiver, there is no way that an individual applicant could demonstrate to an officer's satisfaction that he or she qualifies for a waiver in a three to five minute visa interview.

12. To complicate matters further, since the Supreme Court decision on June 26, 2018, the consular officers at the U.S. Embassies in Abu Dhabi and Djibouti have been explicitly informing visa applicants that they will not accept packets requesting a waiver as it is their job to put together the waiver application and they do not need supporting documents to make their determination. For example, on July 19 the U.S. Embassy in Abu Dhabi wrote the following to a colleague of mine, "There is no role or requirement for legal services to facilitate the waiver process, which the Embassy initiated as soon as the applicant was interviewed. Please note – and inform your client – that only U.S. government officials can author waiver requests."

13. Due to the DOS policy of not accepting waiver requests and supporting documents from the visa applicant or attorney, it is virtually impossible for a consular officer to adequately

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evaluate the waiver factors for each case. For visa applications based upon petitions filed with USCIS, the primary focus of evidence submitted throughout the case is to prove that a bona fide employment opportunity exists or a bona fide family relationship exists. For visa applications without a petition, the primary focus is of evidence submitted is to prove that the individual is not inadmissible to the United States and satisfies the basic criteria for the visa classification sought. Furthermore, the waiver processes defined in regulation for the various inadmissibility grounds are largely based upon hardship to a U.S. person and not on the visa applicant. The P.P. 9645 § 3(c) factors turn the existing waiver guidelines around and look at evidentiary factors beyond those in a standard visa petition or application. While the bona fide nature of a relationship or employment opportunity may be a part of the waiver factor evaluation, it is unlikely to adequately describe the full extent of the undue hardship or national interest. Furthermore, the only document most immigrant visa applicants, and few non-immigrant visa applicants, submit in support of satisfying national security and public safety review are a standard police certificate from any country they have lived in for more than six months. Fundamentally the documents necessary for normal visa processing are insufficient to always and consistently show whether a visa applicant satisfies the waiver criteria.

14. Consular officers are able to quickly find that a visa applicant does not qualify for a P.P. 9645 waiver, because the necessary documentation to support a waiver has not historically been a required portion of the visa application. As a result, by not accepting documents and legal analysis relevant to the P.P. 9645 waiver factors, the consular officer has an excuse to not carry out the excessively burdensome security screening process. Alternatively, consular officers are tacitly acknowledging that the waiver process is a fraud and documentary evidence is not necessary to satisfy the undue hardship and national interest factors or they are avoiding busy work because virtually no applicant can pass the national security and public safety screening.

15. In addition to the lack of publicly available procedures to acquire a waiver to Proclamation 9645, DOS does not appear to have adequately trained its consular officers as to its scope or

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exceptions. As a result, visa applicants that are stateless or dual nationals consistently find themselves being considered for a waiver and individuals in the U.S. fear leaving in the event a consular officer may fail to apply a valid exception or an overbroad definition of the scope to the individual and thereby constructively deny them a visa to return.

16. The P.P. 9645 § 3(c) terms of art "undue hardship", "national interest", and "national security or public safety" are not defined within the proclamation and have not been adequately defined by DOS. As a result, there is little guidance on how a visa applicant could satisfy these requirements in order to obtain a waiver. The only guidance that has been made available was not to the public, but instead to Congress in the DOS letter sent to Senator Hollen, where the terms of art were given more slightly more definition.

17. Prior to the Department of State's letter to Senator Chris Van Hollen on February 22, 2018, no definition of the terms "undue hardship", "national interest", or "national security or public safety" had been publicly provided.

18. In its letter to Senator Hollen, DOS described "undue hardship" as "an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans would defeat the purpose of travel". However, this definition of undue hardship is higher than and inconsistent with the standard defined in *In re E-L-H*, as it requires an element of novelty in the hardship being "an unusual situation". DOS has not provided any other guidance on how "undue hardship" is defined or what it may look like.

19. The "undue hardship" standard as defined by DOS to Senator Hollen is inconsistent with the examples provided in P.P. 9645 § 3(c)(iv). The examples do not require the existence of "an unusual situation", but instead describe multiple scenarios that are relatively common but distinctly fit within the legal definition of undue hardship. For example, (A) covers visa applicants with long-term or continuous presence in the U.S. dedicated to an activity that would be impaired should a visa not be granted, (B) covers all categories of significant contacts within the U.S. (e.g., family, business, investment, and other possibilities), (C) includes individuals pursuing significant professional or business obligations that would be impaired if a visa was not granted, (D) includes situations where failure to grant a visa would

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cause undue hardship to a close family relationship, which inherently includes bona fide relationships classically necessary for a family-based petition, (E) covers the young, those with medical need, adoptees, and the elderly, and the remainder cover government related situations. None of these necessarily meets the novelty inherent in describing something as an "unusual situation". Nonetheless, DOS has set the "undue hardship" standard higher than that described in the Proclamation itself and within the existing body of law for that term.

20. As a result of DOS's overly burdensome definition for "undue hardship" and based on my experience, U.S. Embassies and Consulates are inconsistently applying the term:

a. Until March 2018, the U.S. Embassy in Djibouti systematically informed visa applicants and their lawyers that a travel ban waiver would only be considered when there was a showing of "extreme hardship". Recently the Embassy has started reconsidering cases it had previously denied, but it has not provided any guidance as to how it is defining "undue hardship".

b. The U.S. Embassy in Abu Dhabi, U.A.E., systematically refuses to respond to immigration attorneys and visa applicants unless it initiates the conversation. Based upon its issuance of questions similar to those on DOS Form DS-5535, it appears that the Embassy is utilizing the more familiar "extreme hardship" standard for its hardship analysis.

c. The U.S. Embassy in Ankara, Turkey, appears to have implemented a slightly more lenient standard than "extreme hardship", but has trended toward only referring cases for waiver review when the hardship is family based rather than related to an individual's education, economic, or employment needs. However, its implementation of "undue hardship" still appears to be greater than the prevailing legal definition of the term based upon its existing use within immigration and administrative law.

d. The U.S. Embassies in Addis Ababa, Ethiopia and Nairobi, Kenya, appear to have implemented a standard for "undue hardship" consistent with the legal definition of "preventing [the applicant] from maintaining ties to close family members." *In re E-L-H*, 23 I&N Dec. 700, 703-4 (B.I.A. 2004) (Opinion written by AG Janet Reno). However,

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these embassies appear to largely disregard undue hardship based upon an adverse impact to an individual's education, economic livelihood, or employment. Furthermore, these embassies unnecessarily restrict the definition of "close family members" to unmarried children under 21 and spouses.

21. Prior to and after the letter to Senator Hollen, DOS has not provided any guidance on what it means for travel to the U.S. to be in the "national interest". In its letter to Senator Hollen, DOS write that "the applicant's travel may be considered in the national interest if the applicant demonstrates to the consular officer's satisfaction that a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted."

22. The DOS letter to Senator Hollen sets out a national interest standard prefaced upon harm to U.S. persons, including entities. However, in application at U.S. embassies and consulates the national interest standard has largely been applied as equivalent to extreme hardship. For example, consular officers regularly find that there is no hardship suffered when siblings are not allowed to visit each other in the U.S., when refugees cannot bring their loved ones to the U.S., or when regional centers and EB-5 qualifying businesses cannot receive local input from their investors. As a result, the standard is being inconsistently implemented, with many embassies appearing to expect a showing that the U.S. person would imminently cease to exist without the visa applicant.

23. The final factor to obtain a waiver is to establish that the applicant is not a threat to national security or public safety. According to a DOS representative at the AILA Annual Conference 2018, this factor requires a consular officer to determine the undue hardship and national interest factors first and then to refer the case to the DOS Visa Office in the U.S. Once at the Visa Office an analysis via internal security officers of the U.S. government, as authorized by INA 105(a), is carried out. This process of coordination was opaquely described in the DOS to Senator Hollen as follows: "to establish that an applicant does not constitute a threat to national security or public safety, the consular officer considers the information-sharing and identity-management protocols and practices of the government of the applicant's

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country of nationality as they relate to the applicant. If the consular officer determines, after consultation with the Visa Office, that an applicant does not pose a threat to national security or public safety and the other two requirements have been met, a visa may be issued with the concurrence of a consular manager." It is often indicated that a consular officer has found the previous two criteria satisfied by the issuance of Form DS-5535 or a list of questions taken from the form.

24. The DOS's description of the process to satisfy the national security or public safety threat analysis appears to be substantively similar to the review allegedly done to evaluate countries for inclusion in P.P. 9645. In particular, countries that are subject to P.P. 9645 allegedly failed to satisfy the "global requirements for information sharing in support of immigration screening and vetting" as set out in the Proclamation. Therefore, the national security or public safety threat analysis, as described to Senator Hollen, appears to be a sham as virtually nobody would be able to satisfy the information sharing requirements, if the country of their nationality truly failed to satisfy the requirements during the alleged analysis and consultation completed by the Secretary of State, Secretary of Homeland Security, and the Attorney General.

25. Based on the patterns and behaviors of cases undergoing additional review both before and after the issuance of the various travel bans, including P.P. 9645, it appears that DOS has implemented "extreme vetting" by merging its Visas Condor, Visas Donkey, and Visas Viper programs and removed the basic screening criteria for individuals from P.P. 9645 designated countries. Visas Condor is an additional screening and background check process for individuals from the T-7 list of State Sponsors of Terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria) and the List of 26, countries with allegedly significant terrorist activity (Afghanistan, Bahrain, Djibouti, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, UAE, Yemen). Visas Condor is a mandatory stop list that utilizes ICE's Pre-Adjudicated Threat Recognition and Intelligence Operations Team along with resources at the FBI, DOS, CIA, and other agencies in order to evaluate whether a mandatory stop should

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be ordered for a visa applicant. Visas Condor, except for "extreme vetting", is largely automated for the majority of applicants and often takes less than a week to complete an evaluation. Visas Donkey is a namecheck and biometric information evaluation for potential IDENT or HIT matches that then cause additional review in 2% to 3% of all cases. Visas Donkey often takes between 4 and 6 months to complete review. Visas Viper is used to review biometric details of visa applicants for matches with known or suspected terrorists and can often take upwards of a year to complete review. Prior to the implementation of P.P. 9645, cases went through a preliminary screening process to identify the probability of a Visas Condor, Donkey, or Viper match requiring further review. After the implementation of P.P. 9645, it appears that all cases for individuals from the designated countries go through complete Visas Condor, Donkey, and Viper evaluations and less than 2% of cases appear to pass through the evaluations quickly. Prior to the proclamation, when a visa applicant had a Visas Donkey or Visas Viper hit, it was normal for DOS to request additional information similar to that included on the new Form DS-5535.

26. Consular officers regularly issue a Form DS-5535 or questions similar to it once the officer is satisfied that the undue hardship and national interest factors are satisfied. It is my opinion that the Form DS-5535 is being used to carry out the full evaluations necessary to complete in-depth Visas Condor, Donkey, and Viper evaluations. It is possible that other Visas programs are being used as well or have been created to satisfy this requirement, but these are the systems that I am aware of due to my research on the causes of administrative processing and national security review. It now appears that DOS has made full review with each of these Visas systems mandatory for all cases for visa applicants from the designated countries under P.P. 9645. As a result, Visas programs that were originally designed to quickly screen cases and then refer only a small percentage for in-depth scrutiny, are now being used to carry out extensive investigations on all applicants from the designated countries.

27. Based upon the lengthy delays in evaluating the national security and public safety factor for visa applicants from P.P. 9645 designated countries, it is my opinion that DOS and its partner

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agencies fundamentally lack the resources to carry out the vast increase in background checks necessary to utilize a full Visas Condor, Viper, and Donkey investigation on every case from the P.P. 9645 designated countries. In part this lack of resources was emphasized by former Secretary of State Rex Tillerson when he issued new interview guidelines last year: "In order to ensure that proper focus is given to each application, posts should generally not schedule more than 120 visa interviews per consular adjudicator/per day. Please [note] that limiting scheduling may cause interview appointment backlogs to rise." DOS Cable SUPERSEDING 17 STATE 24324: IMPLEMENTING IMMEDIATE HEIGHTENED SCREENING AND VETTING OF VISA APPLICATIONS, 17 STATE 25814 (Mar. 17, 2017). As anticipated by former Secretary Tillerson, tremendous backlogs have resulted internationally due to the heightened screening and vetting processes. Even with the small reduction in the number of visa interviews per consular adjudicator per day, it appears that consular officers cannot keep up with the workload necessary to evaluate each case (even when disallowing the submission of supporting documents) for satisfaction of the criteria for a P.P 9645 § 3(c) waiver. Furthermore, the backlogs caused by the unnecessary elimination of the basic screening criteria for Visas Condor, Donkey, and Viper when applied to visa applicants from the P.P. 9645 designated countries, has adversely impacted the U.S. immigration system as a whole. As a result, the review of cases that legitimately have hits in Visas Donkey, Condor, and Viper screening process are slowed and the effectiveness of these programs has been diminished. For example, a professor from Europe had a name hit with a known terrorist, which resulted in review under Visas Viper. The professor had never traveled to any of the designated countries or any of the Visas Condor countries. Nevertheless, he was required to complete a DS-5535 and his case was held in administrative processing for over a year. Ultimately the professor's only choice to resolve the case was to either lose his job or seek a writ of mandamus against the Department of State for failing to adjudicate his case in a reasonable amount of time. Within days of the filing of the writ of mandamus, his visa was approved. Fundamentally the professor's case is one illustration of how the enormous backlogs caused by the elimination of basic screening principles in order

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to implement extreme vetting through the P.P. 9645 waiver process has adversely impacted visa applications worldwide for no apparent tangible benefit.

28. In conclusion, it is my opinion that the haphazardly implemented provisions of P.P. 9645 result in an unnecessary burden on the Department of State, excessive and unnecessary denials for individuals with legitimate cases from the designated countries, and fundamentally appears to be little more than a sham due to the recursive requirements of its apparent implementation.

I declare under penalty of perjury on this 26th day of July 2018 that the foregoing is true and correct to the best of my knowledge, experience, and understanding.

Jay Gairson, WSBA # 43365
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Exhibit E

United States Department of State

Washington, D.C. 20520

FEB 22 2018

The Honorable
Chris Van Hollen
United States Senate
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your letter of January 31 regarding Presidential Proclamation 9645 on *Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public Safety Threats* (the Proclamation), which suspended the entry into the United States of certain nationals of eight designated countries, Chad, Iran, Libya, Syria, Yemen, North Korea, Venezuela and Somalia. In particular you request information regarding the processing of waivers for nationals of these countries following the Supreme Court's December 4, 2017 stay of injunctions entered by lower courts which enjoined the implementation of the Proclamation. We are responding questions posed in your letter that relate to the Department of State. The Department of Homeland Security will write to you relating to issues under its authority.

Section 1(b) of the Proclamation stresses that it is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats and that screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. Further, the Proclamation notes that information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. It determines that the governments of Chad, Iran, Libya, Syria, Yemen, North Korea, Venezuela and Somalia had inadequate identity-management protocols, information-sharing practices, and risk factors, such that entry restrictions and limitations are required.

Section 3(b) of the Proclamation specifically excepts certain nationals of the designated countries from the Proclamation's entry restrictions, and section 3(c) provides for a case-by-case waivers of the entry restrictions. The entry restrictions of the Proclamation may be waived if a consular officer determines that the applicant meets each of the following three criteria: (1) denying entry would cause the foreign national undue hardship; (2) entry would not pose a threat to the national security or public safety of the United States; and (3) entry would be in the national interest.

As part of the visa application process, all aliens are required to submit an online visa application form. The application form requests a variety of information about the alien's history and background, including his family relationships, work experience, and criminal record. See, e.g., 8 U.S.C. § 1202(b). The visa application process includes an in-person interview and results in a decision by a consular officer. 8 U.S.C. §§ 1201(a)(1), 1202(h), 1204; 22 C.F.R. §§ 41.102, 42.62.

When adjudicating the visa application of an applicant subject to the Proclamation, the consular officer must first determine whether the applicant is eligible for a visa under the provisions of the Immigration and Nationality Act (INA). The applications of both immigrant and nonimmigrant visa applicants from the designated countries are processed in the same manner as all other applicants for U.S. visas. This processing includes screening of their fingerprints and biometric information though the Department's Consular Lookout and Support System (CLASS) database; and screening through IDENT (which contains DHS fingerprint records), NGI (the FBI Next Generation Identification database), and the Department's Facial Recognition database, which contains watchlist photos of known and suspected terrorists obtained from the FBI's Terrorist Screening Center (TSC) as well as the entire gallery of prior visa applicant photos. If an applicant from one of the designated countries is determined to be otherwise eligible for a visa under the INA, the interviewing officer must then determine whether the applicant falls into one of the exceptions to the Proclamation. Only if the otherwise eligible applicant does not fall within an exception, will the consular officer consider the applicant for a waiver. Each applicant who meets the conditions set forth in section 3(c) of the Proclamation must be considered for a waiver. There is no waiver form to be completed by the applicant.

Consular officers may grant waivers on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that he or she meets the three criteria discussed above. First, to satisfy the undue hardship criterion, the applicant must demonstrate to the consular officer's satisfaction that an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans would defeat the purpose of travel. Second, the applicant's travel may be considered in the national interest if the applicant demonstrates to the consular officer's satisfaction that a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted.

Finally, to establish that the applicant does not constitute a threat to national security or public safety, the consular officer considers the information-sharing and identity-management protocols and practices of the government of the applicant's country of nationality as they relate to the applicant. If the consular officer determines, after consultation with the Visa Office, that an applicant does not pose a threat to national security or public safety and the other two requirements have been met, a visa may be issued with the concurrence of a consular manager.

Section 3(c)(iv) of the Proclamation provides examples of the circumstances in which a waiver might be appropriate. The Department's worldwide guidance to consular officers regarding waivers is drawn directly from the Proclamation. Further, consular officers may consult with the Visa Office if a consular officer believes a case may warrant a waiver but the applicant's circumstances do not align with one of the examples in the Proclamation.

Your letter also requests statistical information about the number of applicants from the designated countries who have applied for visas and those who have received waivers. Unfortunately, some of the information you seek is not readily available in the form you have requested. Nonetheless, we can provide the information attached.

We hope this information is responsive to your concerns. Please do not hesitate to contact us further should you require additional information.

Sincerely,

Mary K. Waters
Assistant Secretary
Legislative Affairs

Enclosure: As stated

SENSITIVE BUT UNCLASSIFIED

VISA APPLICATIONS RECEIVED AND PROCESSED FROM NATIONALS SUBJECT TO PRESIDENTIAL PROCLAMATION 9645
(From December 8. 2017 to January 8, 2018

This non-public information is being provided to address your request as fully as possible. Not for public release without prior consultation with the Department of State.

Applications for nonimmigrant and immigrant visas:	8,406
Applicants refused for reasons unrelated to the Proclamation:	1,723
Applicants qualifying for an exception:	128
Applicants who failed to meet the criteria for a waiver	6, 282
Applications refused under the Proclamation with waiver consideration:	271

Waivers approved (as of February 15): 2

SENSITIVE BUT UNCLASSIFIED

Exhibit F

Announcing NVC's EB-5 Investor Assistance Desk

Montreal to Handle All Fiancé(e) Visa Interviews in Canada

The Department of State Meeting with the American Immigration Lawyers Association (AILA)

The Department of State Meeting with the American Immigration Lawyers Association (AILA)

National Visa Center Meeting with American Immigration Lawyers Association (AILA)

Visa Application Fees to Change April 13

Revisions to Presidential Proclamation 9645

April 10, 2018

On April 10, a new Presidential Proclamation (P.P.) was issued which amended P.P. 9645 of September 24, 2017. The new P.P. removes the visa restrictions imposed on nationals of Chad by the earlier P.P. This change will be effective at 12:01a.m., Eastern Daylight Time, on Friday, April 13, 2018. All other visa restrictions outlined in P.P. 9645 remain in effect.

Additional Background:

The President issued Presidential Proclamation 9645, titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats," on September 24, 2017. Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were determined to be "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

As a result of the April 10 Proclamation, nationals of seven countries are currently subject to various travel restrictions contained in the Proclamation, as outlined in the following table, subject to exceptions and waivers set forth in the Proclamation.

Country	Nonimmigrant Visas	Immigrant and Diversity Visas
Iran	No nonimmigrant visas except F, M, and J visas	No immigrant or diversity visas

Not in Effect

Learn how the Department of State is meeting the growing demand for visas

Final Rule: Issuance of Full Validity L Visas to Qualified Applicants

Capitalizing on Visa Demand to Spur Economic Growth in the United States

State Department Supports Global Travel Growth

Diversity Visa Program (DV-2013) Registration

Transportation Worker Identification Credential (TWIC) - Visa Annotations for Certain Maritime Industry Workers

Diversity Visa Lottery (DV-2012) Registration

Department of Homeland Security Announced ESTA Fee Implementation, Effective September 8

Immigrant Visa Application Fees to Increase July 13, 2010

Nonimmigrant Visa Application Fees to Increase June 4

Korea	No nonimmigrant visas	diversity visas
Somalia		No immigrant or diversity visas
Syria	No nonimmigrant visas	No immigrant or diversity visas
Venezuela	No B-1, B-2 or B-1/B-2 visas of any kind for officials of the following government agencies Ministry of Interior, Justice, and Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People's Power Ministry of Foreign Affairs, and their immediate family members.	
Yemen	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas

In accordance with P.P. 9645, for nationals of the seven designated countries, a consular officer will determine whether an applicant otherwise eligible for a visa is exempt from the Proclamation or, if not, may be eligible for a waiver under the Proclamation allowing issuance of a visa.

No visas will be revoked pursuant to P.P. 9645. Individuals subject to P.P. 9645 who possess a valid visa or valid travel document generally will be permitted to travel to the United States, irrespective of when the visa was issued.

We will keep those traveling to the United States and our partners in the travel industry informed as we implement the order in a professional, organized, and timely way.

FAQs on the Presidential Proclamation - Department of Homeland Security

The President's Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (September 24, 2017)

Presidential Proclamation Maintaining Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats (April 10, 2018)

Frequently Asked Questions

Why were the visa restrictions against Chad removed in the April 10 Presidential Proclamation?

As part of a periodic review of countries as directed in Executive Order 13780, Chad was found to meet the baseline criteria established by the Department of Homeland Security. Specifically, Chad has made significant progress toward modernizing its passport documents, regularizing processes for routine sharing of criminal and terrorist threat information, and improving procedures for reporting of lost and stolen passports.

What are the exceptions in the Proclamation?

The following exceptions apply to nationals from all eight countries and will not be subject to any travel restrictions listed in the Proclamation:

a) Any national who was in the United States on the applicable effective date described in Section 7 of the Proclamation for that national, regardless of immigration status;

b) Any national who had a valid visa on the applicable effective date in Section 7 of the Proclamation for that national;

c) Any national who qualifies for a visa or other valid travel document under section 6(d) of the Proclamation;

Services

Effective January 4, 2010 HIV Infection is Removed from the CDC List of Communicable Diseases of Public Health Significance

Proposal to Increase Nonimmigrant Visa Application Fees

Diversity Visa Lottery (DV-2011) Registration

Visa Waiver Program (VWP) emergency or temporary passports must be electronic passports (e-Passports)

Legal Rights and Protections for Certain Employment or Education-based Nonimmigrants– Notice: Informational Pamphlet is Now Available!

President Obama signs into law, an extension for "SR" nonminister special immigrant religious workers

Nonminister Special Immigrant Religious Worker Program Expiration

President Bush Announces Visa Waiver Program Expansion - VWP

applicable effective date in Section 7 of the Proclamation for that national;

f) Any applicant who has a document other than a visa, valid on the applicable effective date in Section 7 of the Proclamation for that applicant or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;

g) Any dual national of a country designated under the Proclamation when traveling on a passport issued by a non-designated country;

h) Any applicant traveling on a diplomatic (A-1 or A-2) or diplomatic-type visa (of any classification), NATO-1 -6 visas, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; except certain Venezuelan government officials and their family members traveling on a diplomatic-type B-1, B-2, or B1/B2 visas

i) Any applicant who has been granted asylum; admitted to the United States as a refugee; or has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Exceptions and waivers listed in the Proclamation are applicable for qualified applicants. In all visa adjudications, consular officers may seek additional information, as warranted, to determine whether an exception or a waiver is available.

If a principal visa applicant qualifies for an exception or a waiver under the Proclamation, does a derivative also get the benefit of the exception or waiver?

Each applicant, who is otherwise eligible, can only benefit from an exception or a waiver if he or she individually meets the conditions of the exception or waiver.

Does the Proclamation apply to dual nationals?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country.

Our embassies and consulates around the world will process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants who apply with a passport from a non-designated country, even if they hold dual nationality from one of the eight restricted countries.

Does this apply to U.S. Lawful Permanent Residents?

No. As stated in the Proclamation, lawful permanent residents of the United States are not affected by the Proclamation

Are there special rules for permanent residents of Canada?

Waivers may not be granted categorically to any group of nationals of the eight countries who are subject to visa restrictions pursuant to the Proclamation, but waivers may be appropriate in individual circumstances, on a case-by-case basis. The Proclamation lists several circumstances in which case-by-case waivers may be appropriate. That list includes foreign nationals who are Canadian permanent residents who apply for visas at a U.S. consular section in Canada. Canadian permanent residents should bring proof of their status to a consular officer.

A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation during each phase of the implementation and, if so, whether the applicant qualifies for an exception or a waiver.

Will you process waivers for those affected by the Proclamation? How do I qualify for a waiver to be issued a visa?

As specified in the Proclamation, consular officers may issue a visa based on a listed waiver category to nationals of countries identified in the PP on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no

Department of State Announces Diversity Visa Lottery (DV-2010) Registration

DHS Announces Implementation of the Electronic System for Travel Authorization (ESTA) for Visa Waiver Program (VWP) Travelers

USCIS Announces a Proposal to Increase Periods of Stay for TN Professional Workers from Canada or Mexico

New York Business Group Seeks Fewer Restrictions on Foreign Worker Visas

Overseas Education More Attainable for Chinese Students

Immigration Tops Agenda at North American Summit

The Department of State Meeting with the American Immigration Lawyers Association (AILA)

USCIS Modifies Application for Employment Authorization Previous Versions of Form I-765 Accepted until July 8, 2008

DHS Proposes Biometric Airport and Seaport Exit Procedures

DHS Signs Visa

during the visa interview any information that might demonstrate that he or she is eligible for a waiver.

What is a "close family member" for the purposes of determining if someone is eligible for a waiver?

Section 201(b) of the INA provides a definition of immediate relative, which is used to interpret the term "close family member" as used in the waiver category. This limits the relationship to spouses, children under the age of 21, and parents. While the INA definition includes only children, spouses, and parents of a U.S. citizen, in the context of the Presidential Proclamation it also includes these relationships with LPRs and aliens lawfully admitted on a valid nonimmigrant visa in addition to U.S. citizens.

Can those needing urgent medical care in the United States still qualify for a visa?

Applicants who are otherwise qualified and seeking urgent medical care in the United States may be eligible for an exception or a waiver. Any individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might qualify the individual for an exception or waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation, and if so, whether the case qualifies for an exception or a waiver.

The Proclamation provides several examples of categories of cases that may be appropriate for consideration for a waiver, on a case-by-case basis, when in the national interest, when entry would not threaten national security or public safety, and denial would cause undue hardship. Among the examples provided, a foreign national who seeks to enter the United States for urgent medical care may be considered for a waiver.

I'm a student or short-term employee that was temporarily outside of the United States when the Proclamation went into effect. Can I return to school/work?

If you have a valid, unexpired visa and are outside the United States, you can return to school or work per the exception noted in the Proclamation.

If you do not have a valid, unexpired visa and do not qualify for an exception you will need to qualify for the visa and a waiver. An individual who wishes to apply for a nonimmigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for a waiver.

I received my immigrant visa but I haven't yet entered the United States. Can I still travel there using my immigrant visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

I recently had my immigrant visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, you should proceed to submit your documentation. After receiving any required missing documentation or completion of any administrative processing, the U.S. embassy or consulate where you were interviewed will contact you with more information.

I am currently working on my case with NVC. Can I continue?

USCIS Issues Guidance for Approved Violence against Women Act (VAWA) Self-Petitioners

USCIS to Allow F-1 Students Opportunity to Request Change of Status

USCIS Runs Random Selection Process for H-1B Petitions

USCIS Announces Update for Processing Petitions for Nonimmigrant Victims of Criminal Activity

USCIS Releases Preliminary Number of FY 2009 H-1B Cap Filings

USCIS Revises Filing Instructions for Petition for Alien Relative

USCIS to Accept H-1B Petitions Sent to California or Vermont Service Centers Temporary Accommodation Made for FY 09 Cap-Subject H-1B Petitions

17-Month Extension of Optional Practical Training for Certain Highly Skilled Foreign Students

Hague Convention on Intercountry Adoption Enters

interview, a consular officer will carefully review the case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or may qualify for a waiver.

What immigrant visa classes are subject to the Proclamation?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Proclamation and restricted. All immigrant visa classifications for nationals of Venezuela are unrestricted. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or a waiver.

I sponsored my family member for an immigrant visa, and his interview appointment is after the effective date of the Proclamation. Will he still be able to receive a visa?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Presidential Proclamation and suspended. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the applicant qualifies for an exception or a waiver.

I am applying for a K (fiancé) visa. My approved I-129 petition is only valid for four months. Can you expedite my case?

The National Visa Center already expedites all Form I-129F petitions to embassies and consulates overseas. Upon receipt of the petition and case file, the embassy or consulate will contact you with instructions on scheduling your interview appointment.

I received my Diversity Visa but I haven't yet entered the United States. Can I still travel there using my Diversity Visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

I recently had my Diversity Visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, please provide the requested information. The U.S. embassy or consulate where you were interviewed will contact you with more information.

Will my case move to the back of the line for an appointment?

No. KCC schedules appointments by Lottery Rank Number. When KCC is able to schedule your visa interview, you will receive an appointment before cases with higher Lottery Rank Numbers.

I am currently working on my case with KCC. Can I continue?

Yes. You should continue to complete your Form DS-260 immigrant visa application. KCC will continue reviewing cases and can qualify your case for an appointment. You will be notified about the scheduling of a visa interview.

Comment Period for Proposed Change to H-2A Program

USCIS Revises Filling Instructions for Petition for Alien Relative

Questions and Answers: USCIS Announces Interim Rule on H-1B Visas

Fact Sheet: Changes to the FY2009 H-1B Program

USCIS Announces Interim Rule on H-1B Visas

DHS Signs Visa Waiver Program Agreements with Slovakia, Hungary and Lithuania

Latvia, Estonia Sign Deals with US on Visa-Free Travel

With All the Talk about Illegal Immigration, a Look at the Legal Kind

Update: Biometric Changes for Re-entry Permits and Refugee Travel Documents

Testimony of Stephen A. "Tony" Edson on U.S. House of Representatives, Committee on Science and Technology Subcommittee on Research and Science Education, House Committee on Science and

KCC will continue to schedule new DV interview appointments for nationals of the affected countries. A national of any of those countries applying as a principal or derivative DV applicant should disclose during the visa interview any information that might qualify the individual for a waiver/exception. Note that DV 2018 visas, including derivative visas, can only be issued during the program year, which ends September 30, 2018, and only if visa numbers remain available. There is no guarantee a visa will be available in the future for your derivative spouse or child.

What if I am a dual national or permanent resident of Canada?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country. You may apply for a DV using the passport of a non-designated country even if you selected the nationality of a designated country when you entered the lottery. Also, permanent residents of Canada applying for DVs in Montreal may be eligible for a waiver per the Proclamation, but will be considered on a case-by-case basis. If you believe one of these exceptions, or a waiver included in the Proclamation, applies to you and your otherwise current DV case has not been scheduled for interview, contact the U.S. embassy or consulate where your interview will take place/KCC at KCCDV@state.gov.

Does this Proclamation affect follow-to-join asylees?

The Proclamation does not affect V92 applicants, follow-to-join asylees.

I've heard that the Department of State does not grant waivers of the Proclamation. Is this correct?

This information is incorrect. As specified in the Proclamation, consular officers may issue a visa to nationals of countries covered by the Proclamation with a waiver on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security or public safety threat to the United States, and denial of the visa would cause undue hardship. There is no separate application for a waiver. An individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver. From December 8, 2017 through April 1, 2018, more than 430 applicants were cleared for waivers after a consular officer determined the applicants satisfied all criteria and completed all required processing. Many of those applicants already have received their visas.

Exhibit G

Gmail by Google

Shabnam Lotfi <shabnam@lotfilegal.com>

Request for Clarity: [redacted] Case Number [redacted]

Vancouver, NIV Unit <vancouverniv@state.gov> Tue, Jan 9, 2018 at 2:42 PM
To: Shabnam Lotfi <shabnam@lotfilegal.com>

Dear Shabnam Lofti,

A consular officer may issue a visa based on a listed waiver category to nationals of countries identified in the Presidential Proclamation on a case-by-case basis.

It has been determined that your client, [redacted], does not meet the definition of close family as she is over 21 years of age.

This decision cannot be appealed.

Non-Immigrant Visa Unit

U.S. Consulate General Vancouver

From: Shabnam Lotfi [mailto:shabnam@lotfilegal.com]
Sent: Wednesday, January 03, 2018 12:41 PM
To: Vancouver, NIV Unit
Cc: [redacted]
Subject: Request for Clarity: [redacted] Case Number [redacted]

Dear Consular Officer,
Per your communication (see attached), it appears as though my client, [redacted], has been denied the opportunity to request a waiver of the presidential proclamation.

According to the presidential proclamation itself and guidance on the State Department's website, foreign nationals who seek to enter the US to be reunited with a close family member (e.g. spouse, child, or parent) are eligible for requesting a waiver.

My client is the daughter of a United States citizen. Could you kindly explain why your office has denied my client the opportunity to request a waiver of the presidential proclamation?

Respectfully,

Attorney Shabnam Lotfi

Lotfi Legal, LLC

22 East Mifflin St Ste 302

Madison, WI 53703

(608) 259-6226

shabnam@lotfilegal.com

www.lotfilegal.com

Official

UNCLASSIFIED

Exhibit H

From: Abu Dhabi, IV [mailto:AbuDhabiIV@state.gov]
Sent: Thursday, July 19, 2018 9:04 AM
To: Zahedilaw
Subject: RE: Case# ABD2015772009

Dear Ms. Zahedi,

As we said, we have all the required documents at this time. We have already submitted a waiver request on behalf of the applicant, as the applicant was informed during the interview. There is no role or requirement for legal services to facilitate the waiver process, which the Embassy initiated as soon as the applicant was interviewed.

Please note – and inform your client – that only U.S. government officials can author waiver requests.

Sincerely,

Consular Section

U.S. Embassy Abu Dhabi

Official - Privacy/PII

UNCLASSIFIED

From: Zahedilaw [mailto:zahedi@zahedilaw.com]
Sent: Wednesday, July 18, 2018 7:57 PM
To: Abu Dhabi, IV
Subject: RE: Case# ABD2015772009

Dear Consular Officer:

Thank you very much for your kind reply.

Could you please kindly let us know whether you will allow our office to submit a waiver packet on behalf of the beneficiary to outline and present evidence that he meets the grounds for approval of a waiver in consideration of the three

grounds outlined by Section 3(c) of the Proclamation, related to (1) undue hardship, (2) entry not posing a threat to the national security or public safety of the US and (3) entry would be in the national interest.

Thank you again for your attention in this matter.

Regards

Parastoo G. Zahedi

Attorney At Law

Law Office Of Zahedi PLLC
8133 Leesburg Pike Suite 770
Vienna, VA 22182
Phone: 703-448-0111
Fax: 703-448-5552

Corporate Immigration 2017-2018

From: Abu Dhabi, IV [mailto:AbuDhabiIV@state.gov]

Sent: Wednesday, July 18, 2018 4:33 AM
To: Zahedi Law
Subject: RE: Case# ABD2015772009

Dear Ms. Zahedi,

We have all the required documents at this time. Please note that the case will remain in refused status if and until a waiver is approved.

Sincerely,

Consular Section

U.S. Embassy Abu Dhabi

Official - Privacy/PII

UNCLASSIFIED

Exhibit I

Consular Section of the
Embassy of the United States of America
Yerevan, Armenia

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

✓ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

☐ The consular officer is reviewing your eligibility for a waiver under the Proclamation. To approve a waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your visa application will remain refused under Section 212(f). You will be contacted with a final determination on your visa application as soon as practicable.

Regards,
Nonimmigrant Visa Unit

متقاضی گرامی،

به اطلاع می رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

✓ با در نظر گرفتن مقررات این بیانیه، درپرونده شما این محدودیت چشم پوشی نخواهد شد.

☐ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر
بخش ویزای غیر مهاجرتی

Exhibit J

United States Department of State

Washington, D.C. 20520

JUN 22 2018

The Honorable
Chris Van Hollen
United States Senate
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your letter of April 19 regarding the implementation of Presidential Proclamation 9645 (PP 9645) *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats,* in which you reference the letter we sent you and Senator Jeff Flake on February 22 and seek additional information about the impact of the Proclamation on the processing of U.S. visas.

We defer to the Department of Homeland Security to address your request for reports submitted by the Secretary of Homeland Security to the White House pursuant to section 4(a) of PP 9645. We further note that PP 9645 sets out the basis for the designation of the countries listed and specifies the inadequacies in identity management protocols, information-sharing practices, and other risk factors that resulted in those countries being subject to the stated travel restrictions.

As discussed in our February 22 letter, the Department's worldwide guidance to consular officers regarding when a waiver pursuant to section 3(c) of PP 9645 may be granted is drawn directly from PP 9645 itself. That letter contains further information about how consular officers determine that the applicant has met each of the three criteria for a waiver. The Department's internal operational guidance is intended for consular officer's internal use only and is not publicly available, as well as being the subject of ongoing litigation upon which we cannot comment.

The Department does not routinely maintain the statistics you have requested in the form which you have requested. We have attached the available information which we believe is responsive to your concerns. As noted on the Department's public website, Travel.State.Gov, (https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/RevisionatoPresidentialProclamation9645.html) from December 8, 2017 through May 31, 2018, more than 768 applicants were cleared for waivers after a consular officer determined the applicants satisfied all criteria and completed all required processing. (This information is updated every two weeks.) Many of those applicants received their visas. In the months since full implementation of PP 9645 began on December 8, 2017, the number of cases cleared for waivers has grown at an increasing rate. We note that the statistic provided with our February 22 letter which stated that two cases had been cleared for waivers, was as of January 8 (the attachment mistakenly indicated February 15), or only after one month of processing cases under PP 9645. The increase in the number of cleared waivers, and the decrease in the time required to clear a waiver was expected as time elapsed.

We hope this information is helpful. Please do not hesitate to contact us further on this or any other matter.

Sincerely,

Mary K. Waters
Assistant Secretary
Legislative Affairs

Enclosure: As stated

This non-public information is being provided to address your request as fully as possible and is for your use in your legislative work.
Not for public release without prior consultation with the Department of State.

VISA APPLICATIONS RECEIVED AND PROCESSED FROM NATIONALS SUBJECT TO PRESIDENTIAL PROCLAMATION 9645
(As of April 30 unless otherwise stated)

(Note: The points below contain preliminary data which are subject to change. Any changes should not be statistically significant.)

Number of NIV and IV applications from impacted nationalities who applied for visas in the P.P. 9645 covered categories: 33,176

Number of applicants found ineligible for reasons other than those covered in P.P. 9645(e.g. INA 214(b)) so a review for eligibility under P.P. 9645 was not required: 4,900

Number of applicants who received a visa under an exception from P.P. 9645: 1,147

Number of applicants cleared for waivers: 579 (768 as of May 31)

Number of applicants interviewed, but still awaiting a determination on a waiver: 4,157

Exhibit K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AHMAD ALHARBI, ET AL.,	:	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
Plaintiff,	:	
	:	18-CV-2435 (BMC)
- against -	:	
STEPHEN MILLER, ET AL.,	:	
Defendant.	:	

COGAN, District Judge.

This case is before the Court on plaintiffs' motion for a preliminary injunction. The parties have submitted motion papers in support of and opposition to the motion, and the Court has held a hearing on the matter. The Court's findings and conclusions pursuant to Rule 52(a) of the Federal Rules of Civil Procedure are set forth below. To summarize, plaintiffs are likely to succeed on their petition for a writ of mandamus under the Mandamus Act, 28 U.S.C. § 1361, and most plaintiffs are entitled to have the Government provide them with their printed, issued visas.

FINDINGS OF FACT

1. Plaintiffs are members of twenty-one different families, each of which has one or two United States citizens or lawful permanent residents ("plaintiffs-petitioners") who filed Form I-130 Petitions for Alien Relatives on behalf of one or more family members who are citizens or nationals of Yemen ("plaintiffs-beneficiaries").

2. United States Citizenship and Immigration Services ("USCIS") approved the I-130 Petitions and forwarded them to the State Department's National Visa Center to begin pre-processing of potential visa applications by the plaintiffs-beneficiaries.

3. Subsequently, the State Department transferred plaintiffs-beneficiaries' immigrant visa cases from the Embassy in Sana'a, Yemen (where consular services are indefinitely suspended), to the Embassy in Djibouti, one of the consular sections where Yemeni nationals may now apply for visas.

4. The current conflict in Yemen subjected plaintiffs-beneficiaries to severe hardships, as they struggled to survive in a warzone described in detail in declarations they submitted in support of this motion.

5. Accordingly, plaintiffs-beneficiaries fled from Yemen and traveled to Djibouti, where they still reside. There they faced, and continue to face, a new host of hardships as effectively stateless immigrants. In their declarations, plaintiffs-beneficiaries describe poverty, inadequate medical care, poor education, and isolation.

6. When they arrived in Djibouti, plaintiffs-beneficiaries contacted the Embassy to schedule immigrant visa interviews.

7. Documentary and declaratory evidence supports finding that the following plaintiffs-beneficiaries were issued "approval notices" after their consular interviews, which took place between July and November, 2017: Nidal Assieby, Ahmad Alharbi, Riyadh Alharbi (child of Riyadh Alharbi and Nidal Assieby), Ghadeer Murshed, Taha Thabit, Aisha Thabit, Qasem Thabit, Emad Mugamal, Jehan Alnajjar, Duaa Mugamal, Shahd Mugamal, Musleh Mugamal, Mohamed Mugamal, Hussain Mugamal, Sami Al-Namer, Sadam Mugamal, Yasmeen Mugamal, Salah Mugamal, Nadia Saleh, Nooira Mugamal, Layan Mugamal, Laila Ali, Dheyazan Saeed,

Rashed Al Shugaa, Bassam Almontaser, Aisha Ragih, and Ali Hamood (collectively, "approved plaintiffs-beneficiaries").[1]

8. Each approval notice read, "[y]our visa is approved. We cannot guarantee how long it will take to print it and have your passport ready for pick up. You should check the status of your visa online . . . ." The approval notices then listed a State Department website at which approved plaintiffs-beneficiaries could check their visa status.

9. Interviewing Consular Officers told several of the approved plaintiffs-beneficiaries to continue checking in, to wait for their visas to be printed, or that they would receive their visas shortly.

10. Proclamation 9645 suspends entry into the United States for most Yemeni nationals. However, section 6(c) of Proclamation 9645 states that "[n]o immigrant or nonimmigrant visa issued before the applicable effective date . . . of this proclamation shall be revoked pursuant to this proclamation."[2]

11. At the time Proclamation 9645 went into effect, Consular Officers had not yet printed approved plaintiffs-beneficiaries' actual visas; none of them had received their visas.

1. After approved plaintiffs-beneficiaries had obtained their approval notices, the Supreme Court issued a stay order on December 4, 2017. See Trump v. Hawaii, 138 S. Ct. 542 (2017). That order effected a stay of preliminary injunctions issued by federal district courts in

[1] The evidence does not support a finding that Gameelah Alharbi and Iseal Mussa received approval notices. In her declaration, Gameelah Alharbi states that she "was told to wait in 'admin processing.'" Iseal Mussa's father has submitted a declaration that does not make it clear that his son received an approval notice. The evidence shows that Ahmed Al Saidi was issued an expired visa.

[2] A previous iteration of Proclamation 9645, Executive Order 13769, suspended entry or re-entry into the United States by certain aliens from listed countries (including Yemen) regardless of whether they had already been issued a valid immigrant or non-immigrant visa. Several courts issued injunctions against that order, finding that it was likely to violate due process rights of certain aliens. See Washington v. Trump, 847 F.3d 1151, 1156 (9th Cir.), reconsideration en banc denied, 853 F.3d 933 (9th Cir. 2017), and reconsideration en banc denied, 858 F.3d 1168 (9th Cir. 2017), and cert. denied sub nom. Golden v. Washington, 138 S. Ct. 448 (2017).

Hawaii and Maryland. Those preliminary injunctions had stayed implementation of Presidential Proclamation 9645 ("Proclamation 9645"). By reason of the stay order, Proclamation 9645 became operative again.

2. Consular Officers at the Embassy in Djibouti subsequently notified the approved plaintiffs-beneficiaries that pursuant to Proclamation 9645, their immigrant visa applications were refused with no right of appeal.

CONCLUSIONS OF LAW

3. A district court may issue a mandatory preliminary injunction, which commands the Government to perform a specific act, only if 1) the movant establishes that it will suffer irreparable harm; and 2) the movant "has shown a 'clear' or 'substantial' likelihood of success on the merits." Mastrovincenzo v. City of New York, 435 F.3d 78, 89 (2d Cir. 2006). Additionally, the Court must find that the balance of hardships tips decidedly toward the party requesting the preliminary relief. See Gold v. Feinberg, 101 F.3d 796, 800 (2d Cir. 1996) (internal quotations omitted). Finally, "the court must ensure that the public interest would not be disserved by the issuance of a preliminary injunction." Salinger v. Colting, 607 F.3d 68, 80 (2d Cir. 2010).

4. Approved plaintiffs-beneficiaries are likely to suffer irreparable harm if the Government does not provide them with printed, issued visas. They originally fled Yemen, which they credibly describe as a horrific warzone (a portrayal the Government does not dispute), and must now contend with highly adverse circumstances in Djibouti. As described in their declarations, vulnerability and uncertainty define their future.

5. Plaintiffs have shown that they are clearly likely to succeed on their petition for a writ of mandamus. To do so, they must demonstrate 1) a clear right to the relief sought; 2) a plainly

defined and peremptory duty on the part of the defendants to do the act in question; and 3) no other adequate remedy available. See Anderson v. Bowen, 881 F.2d 1, 5 (2d Cir. 1989).

6. A visa application takes several steps. See generally Saleh v. Tillerson, 293 F. Supp. 3d 419, 431 (S.D.N.Y. 2018). First, a U.S. citizen or lawful permanent resident files an I-130 petition with USCIS seeking to have an alien relative classified as an immediate relative. See 8 U.S.C. § 1154(a)(1)(A); § 1151(b)(2)(A)(i). After USCIS classifies the alien, the agency refers the alien to the National Visa Center, which handles the processing of the application. See U.S. Dep't of State, After Your Petition is Approved, https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/after-petition-approved.html (last visited May 24, 2018); see also 8 U.S.C. §§ 1201(a)(1), 1202(a). Upon completing an application, paying a fee, and submitting supporting documents, the applicant is eligible for an interview. See U.S. Dep't of State, Interview, https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/interview.html (last visited May 24, 2018); see also 8 U.S.C. § 1202(b). As described below, the interview is the final step the applicant must take. There is no dispute that plaintiffs complied with the preceding steps.

7. Chapter 9, Section 504.9-2 of the Foreign Affairs Manual ("FAM") mandates that the Consular Officers who reviewed the approved plaintiffs-beneficiaries' applications and interviewed them were required to do one of two things after the interview: issue or refuse their visas.[3] There was no third option. See id. ("Once an application has been executed, you must either issue the visa or refuse it. You cannot temporarily refuse, suspend, or hold the visa for future action. If you refuse the visa, you must inform the applicant of the provisions of law on

[3] See Am. Acad. of Religion v. Chertoff, 463 F. Supp. 2d 400, 421 (S.D.N.Y. 2006) (There is no doubt that the Executive has "wide latitude" to grant or deny a visa application, but that discretion "does not include the authority to refuse to adjudicate a visa application.")

which the refusal is based, and of any statutory provision under which administrative relief is available."). Chapter 9, Section 504.1-3(h) confirms this binary choice: "[t]here are no exceptions to the rule that once a visa application has been properly completed and executed before a consular officer, a visa must be either issued or refused."

8. That same section also makes clear that Consular Officers must issue visas promptly: "any alien to whom a visa is not issued by the end of the working day on which the application is made, or by the end of the next working day if it is normal post procedure to issue visas to some or all applicants the following day, must be found ineligible under one or more provisions of [the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et. seq*. ("INA")]." Id.

9. These provisions in the FAM draw on State Department regulations. See 22 C.F.R. § 41.121 ("When a visa application has been properly completed and executed in accordance with the provisions of the INA and the implementing regulations, the consular officer must either issue or refuse the visa."); 22 C.F.R. § 42.81.

10. The Government explains that the basis for a visa refusal generally falls into one of two broad categories. First, a reviewing consular officer may determine that an applicant is ineligible on one of the many grounds provided in the INA, such as health-related concerns, conviction for certain crimes, failure to demonstrate proof of adequate financial support in the United States, or fraud in the visa process. See generally 8 U.S.C. §1182.

11. Second, a reviewing consular officer may determine that he does not have sufficient information to finalize his decision. When a consular officer makes that determination, he must refuse the application pursuant to INA § 221(g), 8 U.S.C. § 1201(g), which provides

> No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law, (2) the application fails to comply with the provisions

> of this chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law . . .

8 U.S.C.A. § 1201(g). Refusals in this second category can be further divided into two groups: in the first group are those applicants whose application was incomplete, requiring the applicant to take additional affirmative steps before a consular officer can complete his review. In the second group are applicants with complete applications that require additional administrative processing steps outside of their control. The Government has submitted an affidavit stating that each of the approved plaintiffs-beneficiaries had their visas refused for "administrative processing."

12. Regardless of the basis for refusal, as described above, all applicants whose visa applications are denied must be given a document at the end of their interview informing them both of their denial and its statutory basis. See 9 FAM § 504.9-2. The Government describes this document as intended to help applicants with any next steps they choose to take, but claims that the actual decisions of reviewing consular officers to refuse visas are reflected in entries made in the State Department's electronic Consular Consolidated Database ("CCD"), and that those entries – not the documents provided to applicants – control the outcome of visa applications.

13. The Consular Officers had a non-discretionary duty to either issue or deny each applicant's visa at or promptly after his interview. The Government does not dispute this. Nor does the Government dispute that approved plaintiffs-beneficiaries received approval notices, and that none received refusal notices until after the effective date of Proclamation 9645. The Government acknowledges that this practice was "inconsistent with [State] Department policy."

14. Plaintiffs argue that the approval notices should be interpreted as issued visas. For the reasons that follow, the Court agrees.

15. First, the Consular Officers provided the approval notices when the applicable regulations and FAM provisions mandated that Consular Officers either issue or refuse their visas. The timing suggests that the notice be categorized as one or the other.

16. Second, between the two options, the plain text of the approval notices ("your visa has been approved") obviously indicates issuance, not refusal.

17. Third, during or immediately after their interviews, none of the approved plaintiffs-beneficiaries received refusal notices, as the FAM required if they were, in fact, refused.

18. Fourth, the Government represents (and plaintiffs do not dispute), that Consular Officers in Djibouti did not provide an approval notice if an applicant "still had work to do to establish eligibility for a visa and/or [] provide all required supporting documentation." Instead, in those "situations, the consular section would provide the applicant with a refusal letter . . ." The Government claims (and plaintiffs dispute), that the Embassy issued approval notices when further work remained to be done on an application, but that work was outside the knowledge or control of an applicant. In other words, although the Embassy in Djibouti deviated from State Department procedure, it still adjudicated applications. The Government concedes that the Embassy provided refusal notices to some applicants, but not others (like approved plaintiffs-beneficiaries). In light of that concession, there is no logical reason to conclude that approval notices should be treated as refusal notices. The Embassy clearly knew how to issue the latter.

19. Fifth, and perhaps most significantly, the approval notices make no mention of any outstanding "administrative processing" – let alone any substantive processing – that could result in a refusal. To the contrary, instead of simply being silent as to remaining steps, the

approval notices specifically single out "printing," therefore making clear that a ministerial obstacle – not a substantive one – prevented approved plaintiffs-beneficiaries from having their actual visas in hand.

20. Because the Court interprets the approval notices provided by the Consular Officers as issued visas, they attract the protection of Section 6(c) of Proclamation 9645. That provision states that issued visas cannot be revoked pursuant to the proclamation.[4] The approval notices were simply temporary substitutes for the printed visas Section 6(c) intended to shield from revocation.[5]

21. At oral argument, the Government acknowledged that future visa applicants from Yemen (including approved plaintiffs-beneficiaries, if they choose to reapply) will not be issued a visa unless they are "eligible to avail themselves of one of the limited exceptions in the [P]roclamation." Plaintiffs also claimed that only two applicant waivers (which permit the entry of foreign nationals for whom entry is otherwise suspended) to Proclamation 9645 have been issued in Djibouti.[6] In light of the implementation of Proclamation 9645, approved plaintiffs-beneficiaries do not have an adequate remedy other than the prompt printing of their visas.

22. Because 1) the Consular Officers were required to act under a plainly defined duty to issue or refuse the visas; 2) in granting the approval notices, the officers issued approved

[4] Because the Court concludes that approved plaintiffs-beneficiaries had already been issued visas, their refusal notices are interpreted as revocations.

[5] At oral argument and in their motion papers, plaintiffs argued that the Consular Officers in Djibouti were ill-equipped to handle the influx of visa applicants fleeing war-torn Yemen and could not issue visas as promptly as required by the Foreign Affairs Manual. In response, Consular Officers implemented a makeshift solution to the problem, and provided "approval notices" to plaintiffs-beneficiaries as stand-ins for properly printed visas. Plaintiffs have submitted no evidence to substantiate this explanation, so the Court does not find it as fact. The Government states "the consular section at the Embassy in Djibouti [issued approval notices] for the majority of immigrant visa applicants who applied there," from at least June 2015 until January 2018.

[6] Although the Court does not find this as fact, the Government did not dispute the claim.

plaintiffs-beneficiaries' visas; 3) approved plaintiffs-beneficiaries accordingly had a clear right to not have their visas revoked pursuant to Proclamation 9645; and 4) the only adequate remedy is to provide approved plaintiffs-beneficiaries their printed, issued visas, plaintiffs have demonstrated a clear likelihood of success on their petition for a writ of mandamus.

23. The Government raises several arguments, each of which the Court rejects.

24. First, the Government claims that none of the approved plaintiffs-beneficiaries ever had their visa applications approved, and that the approval notices were erroneously given to approved plaintiffs-beneficiaries, inconsistent with State Department policy. Acknowledging that the rationale behind the Embassy's issuance of the approval notices is "not completely clear," the Government suggests that some Consular Officers intended the notices to encourage applicants to continue checking the listed website for updates on their applications. The Government notes that the Embassy in Djibouti had no correspondence unit to handle routine communication with visa applicants.

25. This explanation makes no sense. The Government offers no reasonable explanation for why Consular Officers, in seeking to remind applicants to check their visa status, would have provided approval notices to those whose visas had actually been refused. Moreover, if the Consular Officers merely intended to prod applicants to check the status of applications in administrative processing, they could have provided a communication with any number of formulations besides, "[y]our visa has been approved" and that the only action remaining was to print it.

26. Second, the Government claims the State Department has no record that any approved plaintiffs-beneficiaries were issued or approved a visa, and that if plaintiffs had checked the website referenced on the approval notices, they would have seen that their visas

had not been approved. The Government has submitted an affidavit stating that contemporaneously with providing the approval notices, the Consular Officers made entries in the CCD documenting that approved plaintiffs-beneficiaries had, in fact, been refused.

27. The Government has offered no reasonable explanation of why Consular Officers would deliver approval notices with crystal-clear language to applicants, and then turn to their computers and refuse the same applications. Even if the Court were to credit this claim, however, it would not help the Government in the face of the issued approval notices.

28. Third, the Government puts forth that the decision memorialized in State Department records, and not the approval notice, controls the status of an application. But the Government has pointed to no authority in support of this argument, nor to any authority suggesting that the approval notices, or any other documents provided after interviews, should not be afforded weight.

29. Finally, the Government contends that when, in January 2018, the State Department learned that the consular section in Djibouti had been providing approval notices, it ordered an immediate stop to the policy, and directed Consular Officers to provide applicants with refusal notices, where appropriate. This is irrelevant to deciding how the approval notices, which approved plaintiffs-beneficiaries received before any change in policy, should be treated.

30. The balance of hardships tips overwhelmingly in favor of plaintiffs. The Government has already reviewed approved plaintiffs-beneficiaries applications, scheduled and conducted interviews, and approved their visas. The relief mandated by this order only requires the Government to undertake the printing of the visas which the approval notice said would occur. On the other hand, in the absence of injunctive relief, approved plaintiffs-beneficiaries will remain in their untenable position.

31. The public interest is served by the United States adhering to the terms of the Proclamation and honoring its representations to prospective immigrants. Approved plaintiffs-beneficiaries complied with the extensive requirements of the visa-application process, and received approval notices after appropriate review.

32. Notwithstanding this ruling, the ordered relief may be a pyrrhic victory for plaintiffs. The Government has broad authority to revoke visas. See 8 U.S.C. § 1201; 22 C.F.R. § 41.122. However, the Government chose to limit that authority by including section 6(c) in Proclamation 9645, which bars it from doing exactly what it did here. The Government may respond to this decision by revoking approved-plaintiffs beneficiary's visas without reference to Proclamation 9645. That is a decision placed with the Executive, not the Courts, and nothing in this decision should be interpreted to limit its power to do so.

CONCLUSION

Plaintiffs' motion for a preliminary injunction is granted and the preliminary injunction will issue separately.

SO ORDERED.

_____
U.S.D.J.

Dated: Brooklyn, New York
May 27, 2018

Exhibit L

Gmail by Google

Shabnam Lotfi <shabnam@lotfilegal.com>

Fwd: YRV2016[redacted]

[redacted] Mon, Feb 5, 2018 at 5:46 PM
To: shabnam@lotfilegal.com

Soheil Vazehrad, RDH,
[redacted]

Begin forwarded message:

From: atefe motevally [redacted]
Date: January 5, 2018 at 10:06:59 PM PST
To: Soheil Vazehrad [redacted]
Subject: Fw: YRV2016[redacted]
Reply-To: atefe motevally [redacted]

On Thursday, January 4, 2018 10:47 AM, "Yerevan, Iran IV" <IranIVYerevan@state.gov> wrote:

Consular Section of the
Embassy of the United States of America
Yerevan, Armenia

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

■ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

☐ The consular officer is reviewing your eligibility for a waiver. To approve your waiver, the consular officer must determine that denying your entry would cause undue hardship, that

your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your application will remain refused under Section 212(f). You will be contacted with a final determination on your application as soon as practicable.

Regards,

Immigrant Visa Unit

متقاضی گرامی،

به اطلاع می رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

■ با در نظر گرفتن مقررات این بیانیه، درپرونده شما این محدودیت چشم پوشی نخواهد شد.
□ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر،
بخش ویزای مهاجرتی

Privacy/PII
This email is UNCLASSIFIED.

image002.jpg
4K

Exhibit M

From: Yerevan, Iran IV [mailto:IranIVYerevan@state.gov]
Sent: Sunday, December 17, 2017 9:21 PM
To: Anthony Ravani <[redacted]>
Subject: RE: YRV2016[redacted]

Dear inquirer,

Unfortunately, your case is not eligible for a waiver under Presidential Proclamation 9645. This refusal under Section 212(f) of the Immigration and Nationality Act applies only to the current visa application. Please be advised that Presidential Proclamation 9645 currently restricts issuance of most visas to nationals of Iran and seven other countries.

Consular Section | Immigrant Visa Unit
U.S. Embassy Yerevan | 1 American Ave, Yerevan 0082, Armenia

This email is UNCLASSIFIED.

From: Anthony Ravani [mailto:[redacted]]
Sent: Friday, December 15, 2017 10:38 PM
To: Yerevan, Iran IV
Subject: RE: YRV2016[redacted]

Dear officer,

Based on the following FAM procedure can you please fully explain why you determined the applicant is not eligible for a waiver.

9 FAM 504.11-3 (U) REFUSAL PROCEDURES

(U) If you determine that the applicant is not eligible for a visa, the following procedures should be followed.

9 FAM 504.11-3(A)(1) (U) Inform the Alien Orally and in Writing

b. **(U)** INA 212(b) requires officers to provide timely written notice that the alien is inadmissible. The written notification should provide the alien (and the attorney of record) with:

(1) **(U)** The provision(s) of law on which the refusal is based;

(2) **(U)** The factual basis for the refusal (unless such information is classified) please also see "Exceptions to Notice Requirements" below;

Sincerely,

Anthony B. Ravani,

Principal Attorney at Law

Immigration & Business Law

Anywhere in USA

Phone: [redacted]

[redacted]

[redacted]

FAX: [redacted]

Lotus Law Group, PLLC

800 Fifth Ave., Suite 400 300 Spectrum Center Dr., Suite 400

Seattle, WA. 98104 AND Irvine, CA. 92618

www.Lotus-Lawgroup.com

Please be advised that in all my work I follow the USA laws and all appropriate Regulations and Policies relevant to your inquiry.

From: Yerevan, Iran IV [mailto:IranIVYerevan@state.gov]
Sent: Thursday, December 14, 2017 11:48 PM
To: Anthony Ravani [redacted]
Subject: YRV2016[redacted]

Consular Section of the

Embassy of the United States of America

Yerevan, Armenia

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

Please see the letter attached.

■ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

☐ The consular officer is reviewing your eligibility for a waiver. To approve your waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your application will remain refused under Section 212(f). You will be contacted with a final determination on your application as soon as practicable.

Regards,

Immigrant Visa Unit

متقاضی گرامی،

به اطلاع می رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

■ با در نظر گرفتن مقررات این بیانیه، درپرونده شما این محدودیت چشم پوشی نخواهد شد.

□ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر،

بخش ویزای مهاجرتی

Privacy/PII

This email is UNCLASSIFIED.

2 attachments

[redacted]png
13K

[redacted].pdf
774K

Exhibit N

mail.com

RE: Fwd: RDJ2017[redacted]- HEIDARYAN, EHSAN

From: "Immigration, Rio" <ImmigrationRio@state.gov>
To: "Heidaryan, Ehsan" <[redacted]>
Cc: "[redacted]" <[redacted]>
Date: Dec 27, 2017 2:13:57 PM

Dear Sir,

Unfortunately your immigrant visa case is refused under Presidential Proclamation 9645 and now considered closed. Do not need to fill out the questionnaire we sent by email.

Atenciosamente,

Best regards,

Immigrant Visa Unit

United States Consulate General

Rio de Janeiro - RJ –Brazil

br

Official

UNCLASSIFIED

From: Immigration, Rio
Sent: Wednesday, December 27, 2017 10:16 AM
To: 'Heidaryan, Ehsan'
Cc: [redacted]
Subject: RE: Fwd: RDJ2017[redacted] HEIDARYAN, EHSAN

Dear Sir,

You must download cerenade extension in your computer to open the form. After fill out you may send it by mail.

Atenciosamente,

Best regards,

Immigrant Visa Unit

United States Consulate General

Rio de Janeiro - RJ –Brazil

br

Official

UNCLASSIFIED

From: Heidaryan, Ehsan [mailto:[redacted]
Sent: Tuesday, December 26, 2017 1:09 PM
To: Immigration, Rio
Cc: [redacted]
Subject: Re: Fwd: RDJ2017[redacted]- HEIDARYAN, EHSAN

Dear Sir/Madam,

Many thanks for your message!

1. Due to information provided by my case officer on the day of the interview, it supposed that email would be sent to me who I am the principal applicant. But it was sent to my wife who is my dependent! By the way, it is OK and please in the future messages consider me as the primary receiver of your message and put her in the copy.

2. Your email was contained *DS5535.far* which is weird to me, would you please let me know how to open it?

3. Regarding returning the completed form, should I upload it to my dropbox and provide you with its link or you have a particular account for that?

Kind regards,
Ehsan Heidaryan
RDJ2017[redacted]

Sent: Tuesday, December 26, 2017 at 9:58 AM
From: "Liliam Festi" [redacted]
To: [redacted]
Subject: Fwd: RDJ2017[redacted] HEIDARYAN, EHSAN

Enviado do meu iPhone

Início da mensagem encaminhada:

De: "Immigration, Rio" <ImmigrationRio@state.gov>
Data: 26 de dezembro de 2017 09:43:18 BRST
Para: "[redacted]
Assunto: RDJ2017[redacted] HEIDARYAN, EHSAN

Dear Immigrant Visa Applicant,

Please find the attached document requiring review and completion by the principal applicant. Please complete the form in English. Once you have completed the form, print it and send to us by drop box or mail..

Be advised that incomplete or unclear responses will delay the processing of your case.

Atenciosamente,

Best regards,

Immigrant Visa Unit

United States Consulate General

Rio de Janeiro - RJ –Brazil

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Attachments

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